

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Retention by Broadcasters of)	MB Docket No. 04-232
Program Recordings)	
)	

COMMENTS OF BROADCASTERS' COALITION

**Beasley Broadcast Group, Inc.
Citadel Broadcasting Corporation
Clarke Broadcasting Corporation
Entercom Communications Corp.
Fox Entertainment Group, Inc.
Galaxy Communications, L.P.**

**Multicultural Radio Broadcasting, Inc.
Radio One, Inc.
Sarkes Tarzian, Inc.
Viacom Inc.
Washington State Association
of Broadcasters**

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EXECUTIVE SUMMARY

The proposed new rule to require that broadcast licensees retain recordings of all programs aired between 6 a.m. and 10 p.m. to “increase the effectiveness” of FCC enforcement of restrictions on obscene, indecent, and profane broadcasts, addresses a phantom problem. Nothing in the Commission’s experience suggests such a requirement is warranted, either to facilitate the filing of complaints by viewers and listeners or to enhance the Commission’s ability to review and dispose of those complaints. Moreover, this exercise in regulatory overkill cannot survive constitutional scrutiny.

A recording requirement for all broadcast programming in the name of indecency enforcement cannot be justified based on raw numbers, whether one examines the total amount of programming, the number of indecency complaints filed, or the number of programs named in complaints. The amount of programming that even potentially violates the indecency rules is miniscule when compared to the millions of hours aired by radio and television broadcasters. Of the eight billion minutes of broadcast programming aired each year, only a few hours are even subject to indecency complaints, most of which are found to be baseless. Moreover, by the Commission’s own estimates only about one percent of complaints are dismissed for lack of substantiation where lack of a tape or transcript might have been an issue.

On the other side of the balance, the advance of technology and the Commission’s “user friendly” procedures mean that it is easier than ever to file an indecency complaint with the FCC. Even the organized groups dedicated to combating what they deem “indecent” programming acknowledge that existing mechanisms make filing indecency complaints “as easy as picking up the telephone or sending an e-mail,” and that the absence of a rule requiring broadcasters to retain recordings does not impede claims. Indeed, a complainant today need never have even heard or seen the broadcast in question. If anything, the extent to which the Commission has

made it easier to file indecency complaints, the increasing frequency and severity of enforcement, and the emergence of organized campaigns to file duplicate complaints indicate that, if further action regarding the indecency complaint process is warranted, it should be to make it more exacting for complainants, not more burdensome for broadcasters.

The possibility of a program taping and retention requirement threatens to increase due process concerns as the Commission has moved away from requiring some quantum of proof, such as a tape or transcript, or a significant excerpt of a program, before the Commission moves forward on a complaint. This trend has resulted in a presumption that a complaint is valid unless the licensee can disprove it. The proposed rule reinforces this trend, contrary to basic constitutional doctrine. Such protections are particularly important for broadcast licensees, whose entire business is at the mercy of FCC licensing.

Not only is a recording requirement unnecessary, it would impose significant economic and administrative burdens on broadcasters. When the FCC last considered such a requirement for reasons similar to those raised here, it found the benefits did not outweigh the costs, that the rule would cause almost every station to expend funds that otherwise could be used for public service programming or other purposes, and that the burdens would fall disproportionately on very small stations. Whatever advances have been made in recording and storage, these findings remain true today. The proposed rule would require broadcasters as an industry to spend at least tens of millions and perhaps well over \$100 million in recording, storage and personnel costs to comply, with no countervailing public interest benefits.

The proposal to require the recording of all broadcast programming would have a profound chilling effect and could not survive First Amendment scrutiny. The proposed rule is strikingly at odds with repeated Commission claims that the First Amendment is a “critical

limitation” on enforcing Section 1464 as well as judicial admonishments that the FCC must exercise “caution” and “restraint” in this sensitive area of regulation. It also conflicts with precedent. The D.C. Circuit struck down a similar recording requirement over a quarter-century ago, finding it imposed substantial burdens, presented risks of direct governmental interference with program content, and was unsupported by any substantial government interest on the other side of the constitutional balance. *Community-Service Broadcasting of Mid-America, Inc. v. FCC*, 593 F.2d 1102 (D.C. Cir. 1978) (*en banc*). Even as that case was being litigated, the FCC rejected a proposal to require broadcasters to retain tapes of their programs, noting that concerns that the proposed rule might have a chilling effect could not easily be dismissed. As one judge on the *en banc* panel wrote, “the taping requirement serves to facilitate the exercise of ‘raised eyebrow’ regulation” because “it provides a mechanism, for those who would wish to do so, to review systematically the content of . . . programming.” *Id.* at 1116.

All the foregoing considered, the proposed recording and retention requirement would not survive intermediate scrutiny under which the Commission must show that the rule will directly and materially serve an important interest, that it is narrowly tailored, and that it will restrict no more speech than necessary. In this regard, a program taping and retention rule would not materially advance the government’s interest in enforcing its indecency rules where fewer than one percent of complaints are dismissed for lack of substantiation. At the same time, it would be excessively burdensome to require broadcasters to record over 26 million hours of programs each calendar quarter because a few minutes may be indecent and a small fraction of the resulting complaints may lack sufficient proof. Accordingly, the Commission should reject the proposed taping and retention requirement.

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The Broadcasters' Coalition, comprised of Beasley Broadcast Group, Inc.; Citadel Broadcasting Corporation; Clarke Broadcasting Corporation; Entercom Communications Corp.; Fox Entertainment Group, Inc.; Galaxy Communications, L.P.; Multicultural Radio Broadcasting, Inc.; Radio One, Inc.; Sarkes Tarzian, Inc.; Viacom Inc.; and the Washington State Association of Broadcasters, by counsel, hereby submits comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ The Coalition is a group of radio and television broadcasters of diverse size who strongly oppose the proposal to require licensees to record all programs and retain the recordings for the ostensible purpose of enhancing the effectiveness of the FCC's enforcement of its indecency rules.

The Commission's proposal addresses a phantom problem, as the Commission's own records demonstrate that the lack of tapes or recordings has had no material effect on indecency enforcement. An exceedingly small percentage of indecency complaints is dismissed for lack of substantiation, and the process for submitting complaints places no significant burdens on complainants. Not only is a recording requirement unnecessary, it would impose significant burdens on broadcast stations while reaping no discernable regulatory benefit. Indeed, the ability of activist groups to use the complaint process to drive the Commission's agenda toward greater

¹ *Retention by Broadcasters of Program Recordings*, 19 FCC Rcd. 12626 (2004) ("Notice").

content control suggests the agency should consider revising its procedures to screen out burdensome and duplicative “form” complaints. Coming in the midst of a crackdown on potentially “indecent” or “profane” broadcasts, the proposal to require the recording of all broadcast programming would have a profound chilling effect and would not survive First Amendment scrutiny.

I. BACKGROUND

The Notice proposes a new rule to require all broadcast licensees to retain recordings of all programs broadcast for 60 to 90 days “to increase the effectiveness of the Commission’s process for enforcing restrictions on obscene, indecent, and profane broadcast programming.”² The proposal was not released in a vacuum, but emerged as high-profile events focused the attention of Congress and the FCC on the issue of indecency enforcement. In this highly-charged atmosphere, the Commission has characterized its recent efforts to enforce the indecency rules as “the most aggressive enforcement regime in decades” and announced “additional steps to sharpen our enforcement blade.” Such measures include increasing penalties for licensees, penalizing multiple utterances within a single program as separate indecency violations, and threatening to convene license revocation proceedings in “egregious” cases.³

² Notice ¶ 1. The Notice proposes to require broadcasters to retain a recording of all material they air between 6 a.m. and 10 p.m. – and potentially 24 hours a day – for a “limited” period of time such as 60 days, and perhaps as long as 90 days or longer. The purpose is to “establish a retention period ... to ensure ... recording[s] will be available” when the FCC takes the initial enforcement step of issuing Letters of Inquiry (“LOIs”) to broadcasters regarding programming alleged to be indecent. *Id.* ¶ 7.

³ Testimony of Federal Communications Commission, Before the United States Senate, Committee on Commerce, Science and Transportation, at 3 (Feb. 11, 2004); Testimony Before the House Energy and Commerce Committee Subcommittee on Telecommunications and the Internet, at 3 (Feb. 11, 2004).

Congress currently is contemplating constitutionally questionable legislation to vastly expand the penalties for broadcast indecency.⁴ However, the FCC did not wait for legislation to pass before expanding both the scope of its indecency enforcement policies and the sanctions for violating them. Since the beginning of 2004, the Commission has announced forfeitures totaling \$1,642,000 and has negotiated settlements netting over \$2 million in “voluntary” payments to the U.S. Treasury.⁵ It overruled precedent which held that the Commission could not penalize a broadcaster unless the indecent utterance is intentional and repeated, and revived the broad and amorphous concept of “profanity” as a separate statutory prohibition under 18 U.S.C. § 1464.⁶ At the same time it has adopted orders that reduce the predictive value of previous staff rulings,⁷ increased the types of programs or utterances that may give rise to an offense,⁸ and multiply the

⁴ See *Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*, S. 2400, 108th Cong. (2004); *Broadcast Decency Enforcement Act of 2004*, S.A.3235, 108th Cong. (2004); *Broadcast Decency Enforcement Act of 2004*, S. 2056, 108th Cong. (2004); *Broadcast Decency Enforcement Act of 2004*, H.R. 3717, 108th Cong. (2004).

⁵ *Emmis Communications Corp.*, Order, FCC 04-199 (rel. Aug. 12, 1999) (\$300,000 “voluntary” payment); *Clear Channel Communications, Inc.*, 19 FCC Rcd. 10,880 (2004) (\$1.75 million “voluntary” payment); *AMFM Radio Licenses, L.L.C.*, 19 FCC Rcd. 10,751 (\$27,500 notice of apparent liability), *concurrently rescinded*, 19 FCC Rcd. 10,775 (2004); *Clear Channel Broad. Licenses, Inc.*, 19 FCC Rcd. 6773 (2004) (\$495,000 notice of apparent liability); *Infinity Broad. Operations, Inc.*, 19 FCC Rcd. 5032 (\$27,500 notice of apparent liability) (“*Infinity Broad. Operations*”); *AMFM Radio Licenses, Inc.*, 19 FCC Rcd. 5005 (2004) (\$247,500 notice of apparent liability); *Capstar TX Ltd. P’ship*, 19 FCC Rcd. 4960 (2004) (“*Capstar*”) (\$55,000 notice of apparent liability); *Emmis Radio License Corp.*, 19 FCC Rcd. 2701 (Enf. Bur. 2004) (\$7,000 forfeiture order for WKXQ); *Clear Channel Broad. Licenses, Inc.*, 19 FCC Rcd. 1768 (2004) (\$755,000 notice of apparent liability); *Young Broad. of San Francisco, Inc.*, 19 FCC Rcd. 1751 (2004) (\$27,500 notice of apparent liability).

⁶ *Complaints Against Various Broadcast Licensees Regarding Their Airing of the “Golden Globe Awards” Program*, 19 FCC Rcd. 4975 (2004) (“*Golden Globe Awards*”).

⁷ E.g., *Infinity Broad. Operations*, 19 FCC Rcd. at 5037 (declaring that § 1464 decisions of the Enforcement Bureau are non-binding “[t]o the extent that the Staff may have erred”).

finer for failing to anticipate the FCC's new regime.⁹ These actions coincided with a general tendency by the Commission to lower the threshold for what constitutes a valid complaint,¹⁰ which appears to have fostered a proliferation of LOIs from the Enforcement Bureau.

As a result of these actions there has been a dramatic and unprecedented retrenchment among providers of broadcast content.¹¹ Depending upon the point of view, these actions may be described as imposing an unconstitutional chilling effect or achieving effective deterrence, but regardless of the characterization there is no serious dispute that the Commission's actions have had a significant dampening effect.¹² Within this context the Notice seeks comment on whether

⁸ E.g., *Young Broad.*, 19 FCC Rcd. 1751 (split-second exposure of nudity during live news interview found to be indecent); *AMFM Radio Licenses, L.L.C.*, 19 FCC Rcd. at 10,755 & n.31 (issuing notice of apparent liability for broadcast that did not include use of the word "penis" but instead used euphemisms).

⁹ *Clear Channel*, 19 FCC Rcd. 6773 (proposing a \$495,000 fine based on a "per utterance" calculation). The Commission also has acted to increase the magnitude of indecency fines by regularly imposing the highest possible fine as a starting point rather than as a maximum for the most egregious offenses, and by imposing penalties on affiliates and syndicated stations. See *id.*; *AMFM Radio Licenses, L.L.C.*, 19 FCC Rcd. 10,751; *AMFM Radio Licenses, Inc.*, 19 FCC Rcd. 5005; *Young Broad.*, 19 FCC Rcd. 1751.

¹⁰ E.g., *Capstar*, 19 FCC Rcd. 4960 (granting complaint without support of tape or transcript where complainant's description of offending broadcast noted "I think those were the words they said"). The Commission even has indicated its intention to take action against stations that have received no complaints at all. E.g., *Clear Channel*, 19 FCC Rcd. at 6779-80.

¹¹ For numerous examples of the significant chilling effect caused by the Commission's new approach to indecency enforcement, see *Petition for Reconsideration of ACLU, et al., Complaints Against Various Broadcast Licensees Regarding Their Airing of the "Golden Globe Awards" Program*, File No. EB-03-IH-0110 (filed April 19, 2004). See also Letter from Americans for Tax Reform to Chairman Michael Powell, June 1, 2004; Comments of the Radio-Television News Directors Ass'n., April 29, 2004; Comments of the Media Institute, May 4, 2004; Comments of the CBS Television Network Affiliates, May 4, 2004; Comments of the Public Broadcasters, May 4, 2004; Comments of the Center for Creative Voices in Media, May 11, 2004; and Comments of the NBC Affiliates, May 4, 2004; NBC Petition for Partial Reconsideration, April 19, 2004; Petition for Reconsideration of David Tillotson, April 12, 2004.

¹² The Notice cautions that the Commission is not seeking comment on its "substantive standards for indecency or any other rules that may be implicated." Notice ¶ 11. Accordingly,

a taping requirement “raise[s] any First Amendment issues,” Notice ¶ 10, the analysis of which requires an understanding of the current enforcement environment.

II. THERE IS NO NEED TO ADOPT A RECORDING REQUIREMENT FOR BROADCAST PROGRAMMING

A. The Commission’s Experience with Indecency Enforcement Does Not Support a Taping and Retention Requirement

There is nothing in the Commission’s experience that suggests a recording and retention requirement is required for broadcast licensees, whether the goal is to enhance the effectiveness of the Commission’s review and disposition of indecency complaints or to facilitate the filing of those complaints. Nevertheless, the Notice proposes to dramatically increase the burdens imposed on licensees.

1. The Commission’s Experience With Complaints Does Not Support a Recording Requirement

A proposal that all programs be recorded and the recordings be retained to facilitate enforcement of the indecency rules cannot be justified based on raw numbers, whether the Commission examines the total amount of programming, the number of indecency complaints filed, the number of programs named in the complaints, or – most tellingly – the few instances in which the lack of a tape or transcript is an issue. The sheer number of programs broadcast each year helps put the program recording proposal into perspective:

In a universe of television and radio programming that is informative, educational and entertaining, the incidences of indecency are infinitesimal. There are more than 1,700 television stations and nearly 13,500 radio stations nationwide, broadcasting a total of some 8 *billion* minutes each year. And yet, in a given year, programming that is found to be indecent

the observation set forth in the text that changes in the FCC’s enforcement practices have had a widespread impact on broadcast programming and practices is not intended to present an argument about the policy’s unconstitutionality in this proceeding. Rather, it is intended only to put the FCC’s quest for greater “effectiveness” into perspective.

typically represents a handful of incidents covering only a few hours of that time even under the vaguest indecency definition that exists today.¹³

To require that all 8 billion minutes be recorded because of the possibility that a minute fraction of programs will lead to FCC complaints, and that an even smaller subset of complaints may lack adequate support, would be a dramatic example of regulatory overkill.

A recording requirement is an extreme solution even if the Commission examines the issue based on the number of indecency complaints filed, and not on the number of hours broadcast. *See* Notice ¶ 6 & n.8 (citing complaint data from 2000-2002). As the Commission's quarterly reports on complaints make clear, focusing just on the number of complaints filed says very little about the extent to which the Commission's practices need to be improved. The Consumer and Governmental Affairs Bureau regularly admonishes the public that "[t]he Commission receives many informal complaints that do not involve violations of the Communications Act, or a rule or order of the Commission. The existence of a complaint does not necessarily indicate wrongdoing by the company at issue."¹⁴ Additionally, the Bureau recently changed the way it counts complaints – a fact that explains much of the reported increase in indecency complaints for the fourth quarter of 2003.¹⁵ Indeed, the Bureau's new method ensures that duplicate complaints will be counted many times over.¹⁶

¹³ The Broadcast Decency Enforcement Act, Hearings Before the Subcommittee on Telecommunications and the Internet, House Committee on Energy and Commerce, 108 Cong., 2d Sess. 39 (Feb. 11, 2004) (prepared statement of Mel Karmazin) (emphasis in original).

¹⁴ CGB, Report on Informal Consumer Inquiries and Complaints, 4th Quarter Calendar Year 2003 (rel. June 10, 2004) ("*Fourth Quarterly 2003 Report*").

¹⁵ *Id.* The most recent quarterly reports show an increase from 19,920 complaints regarding broadcast indecency and obscenity for the third quarter of 2003 to 146,268 complaints during the fourth quarter. *Compare* CGB, Report on Informal Consumer Inquiries and Complaints, 3rd Quarter Calendar Year 2003 (rel. Nov. 20, 2003) *with Fourth Quarterly 2003 Report*. The Commission explained that it now counts complaints received by the Commissioners' offices and filed through the FCC's general email address in addition to the complaints submitted to the

A more telling figure is the number of programs that are named in the complaints to the FCC. Statistics released by the Commission earlier this year illustrate that a tiny fraction of total programs aired are the target of indecency complaints in any given year, and, if anything, the relative number seems to be decreasing. For example, the 530,885 indecency complaints on file with the FCC as of March 2, 2004, pertain to only 23 radio and television shows.¹⁷ All but 57 of those complaints were filed about a single program – the 2004 Super Bowl telecast – while the remaining complaints related to only 22 other shows. In 2003 the FCC received 240,350 complaints focused primarily on 9 programs, including the 2003 Golden Globe Awards show. And in 2002, the Commission received 13,922 indecency complaints, mostly about four programs.¹⁸

The largest number of programs that drew complaints in any given year since the FCC began compiling this data was 345 in 2002 – still a miniscule number compared to the hundreds of thousands of programs aired, and smaller still when considering the very few the Commission considered actionable.¹⁹ The number of programs named in complaints in 2000 and 2001, 101

Enforcement Bureau. Thus, though FCC statistics reflect a more than seven-fold increase in complaints, it acknowledges its “change in method largely accounts for the increase in Radio and Broadcast complaints during the fourth quarter.” News Release, *Quarterly Report on Informal Consumer Inquiries and Complaints Released* (June 10, 2004).

¹⁶ As explained in more detail below, some of the websites that act as “complaint mills” automatically forward a single complaint to each of the Commissioners in addition to the Bureau and to key legislators. See note 24, *infra*. As a result, the Bureau’s new methodology alone produces a minimum five-fold increase in the number of presumed complaints.

¹⁷ See Letter from Chairman Michael K. Powell to Hon. John D. Dingell, March 2, 2004. See Chart of FCC Indecency Complaints Compared to Numbers of Programs (copy attached as Exhibit 1).

¹⁸ Mark Rahner, *FCC Indecency Fight Chilling Free Speech?*, SEATTLE TIMES, April 24, 2004, at A1 (quoting FCC complaint statistics).

¹⁹ In 2002 the FCC received complaints regarding 345 programs but issued 7 notices of apparent liability. *Id.*

and 152 respectively, may be more typical. These figures demonstrate that a very small number of programs – the vast majority of which are not found to be indecent – have been targeted by increasingly large-scale campaigns to flood the Commission with mass complaints. These figures alone, which highlight the miniscule number of programs for which indecency is even alleged, should be sufficient to demonstrate the excessive burden that a taping requirement would entail.

Finally, the small number of complaints subject to dismissal for “lack of a tape, transcript, or significant excerpt,” Notice ¶ 6 n.8, cannot justify a universal taping requirement. The Commission acknowledges that the overwhelming majority of complaints are dismissed for reasons that have nothing to do with the proposed recording and retention requirement. Unsubstantiated complaints represent a very small percentage of complaints overall, and the vast majority of dismissals are based on other reasons. For example, of the 13,537 complaints that were dismissed between 2000 and 2002, only about 1 percent were dismissed for “lack of a tape, transcript, or significant excerpt.”²⁰ Even among the complaints dismissed for this stated reason, the problem may be far broader than simply lack of a tape or transcript, and may reflect other deficiencies, such as failure to identify a program, the broadcast date or the licensee.

If it is seriously considering a taping and retention requirement, the Commission has an obligation to provide precise figures on the complaints it claims were dismissed for a lack of substantiation, and to explain the significance of that number as part of its overall enforcement scheme. Based on figures the Commission has made available this year, we know the following: Of the millions of programs broadcast during the past four years, the FCC received complaints

²⁰ See Notice ¶ 6 n.8 (citing Letter from Chairman Michael K. Powell to the Hon. John D. Dingell, March 2, 2004). Notably, given the significant number of duplicate complaints, it is likely the 1 percent figure greatly overstates the case.

against a total of 939 shows. During this period, from 2000 through 2004, the FCC has issued a total of 30 Notices of Apparent Liability. There is no indication how many complaints may be dismissed for lack of a tape or transcript during this period, but figures provided in the Notice for 2000-2002 suggests that it is a miniscule problem.

2. The Commission's Process for Filing Complaints Does Not Impose Any Undue Burdens on the Public

The FCC has always allowed individuals to file informal complaints, and since the Enforcement Bureau began to accept complaints by email in 2000, it has become an increasingly simple matter to file a complaint with the FCC.²¹ Members of the public, and in particular a number of well-organized activist groups, already take advantage of the Commission's "user friendly" system for lodging and/or pursuing indecency claims. As explained below, this system lends itself to the filing of identical mass complaints against any particular program.²²

Various organizations have further reduced individual burdens associated with filing complaints by operating websites that serve as gateways to the FCC's indecency enforcement

²¹ According to the FCC staff, the Commission did not formally announce it would accept complaints by email, but it is believed the practice began around 2000 as the agency website evolved. The ECFS system for filing comments was initiated in 1998, but the complaint system was added some time thereafter without fanfare. Now, the process for filing complaints is easier than ever before and actively encourages filing by email. *Cf.* CGB, *Filing an Informal Complaint With the FCC is Easy* (www.fcc.gov/cgb/consumerfacts/easycomplaint.html).

²² Even when the sheer volume of complaints against a particular telecast is large, it does not mean that most members of the audience would support the imposition of legal sanctions. For example, although the vast majority of complaints filed with the Commission in 2004 relate to the Super Bowl telecast, at least one nationwide poll suggests that most members of the broadcast audience do not agree that the broadcast was legally indecent. *See* The Associated Press/Ipsos Poll: *Janet Jackson's Act Bad Taste, But Not a Federal Case*, February 24, 2004 (www.ipsos-na.com/news/pressrelease.cfm?id=2062&content=full) (nearly 80 percent of respondents believed that the investigation is a waste of tax dollars).

portals.²³ According to these websites, existing mechanisms “make filing a broadcast indecency complaint as easy as picking up the telephone or sending an e-mail.” *See* Exh. 2 at 1. They note that “[o]ne of the few fortunate things about dealing with the FCC is that [it does] not require strict adherence to form,” *id.*, and they give no indication that absence of a requirement for broadcasters to retain program recordings impedes pursuit of indecency claims. *Id.* at 2. Another way such groups make ample use of existing enforcement mechanisms is to target specific shows the organization already has reviewed and forwarded to the FCC with allegations of indecency violations, and encouraging members or other individuals to “sign a petition” or fill out a web-based form against the program.²⁴ These submissions then are automatically forwarded to the Commission as separate complaints that are identical but for the name of the complainant, to be added to those already on file with respect to the targeted program.²⁵

Ironically, on the day the Notice in this proceeding was issued, a new website dedicated to filing FCC complaints was launched. The “Cleanup.tv” website exhorts visitors to “check back from time to time to join the FCC complaints of others,” and declares, “You do not have to experience an indecent broadcast firsthand in order to become outraged and file a complaint with the FCC!” *See* Exh. 3 at 7. Rather, as explained on the web site, all that need be done to file a complaint is to utilize the site’s automatic online complaint form or the complaint form letters

²³ Examples of these websites are attached as Exhibits 2-5. *See also* Rahner, *supra* note 18 (“The FCC says [the jump in volume is attributable to] mass complaints through e-mail. Web sites such as the Parents Television Council’s make it as easy as hitting a button.”).

²⁴ For examples, *see* Exh. 2 at 17-23 (encouraging site visitors to “join the complaints of others” and providing links to do so); Exh. 3 at 1-2, 4-5.

²⁵ For example, at the time of the FCC staff ruling in the *Golden Globe* matter, 93% of the complaints on file with the FCC had been submitted by persons associated with Parents Television Council. *Complaints About Various Licensees Regarding Their Airing of the “Golden Globe Awards” Program*, 18 FCC Rcd. 19859 n.1 (Enf. Bur. 2003).

posted to the site along with “information about the [alleged] indecent incident.”²⁶ In support of this effort various organizations employ full-time staffs to watch, record and transcribe broadcast programming.²⁷

B. Further Changes in the Complaint Process Threaten Due Process

The possibility of a program taping and recording and retention requirement, coupled with recent changes to the substantive FCC indecency standards, and to its procedural rules in particular, would add to the burden already shouldered by broadcasters to the point where due process safeguards are threatened. Even the staunchest pro-regulatory crusaders have said that the Commission’s processes for raising indecency concerns are easy and efficient to use. And the number of complaints dismissed for failure to provide a tape is exceedingly small. If anything, the extent to which the Commission has made it easier to file indecency complaints, the increasing frequency and severity of enforcement, and the emergence of organized campaigns to file duplicate complaints indicate that, if further action regarding the indecency

²⁶ Cleanup.tv boasts that, using these tactics, more than 79,000 FCC complaints recently have been filed via the site, and “we have mobilized concerned citizens who have **filed over 50,000 complaints** based on a single instance of broadcast indecency.” *Id.* (bold in original). Similarly, the PTC site declares that: “IN JUST TWO DAYS PTC WAS ABLE TO GATHER 7,000 COMPLAINTS.” www.parentstv.org/ptc/publications/ealerts/2003/0129.asp (large caps in original). The sheer volume of complaints filed through such campaigns has overwhelmed the FCC’s server and crashed its systems for fielding consumer contact with the agency. *See* Chris Baker, *TV Complaints to FCC Soar as Parents Lead the Way*, WASH. TIMES, May 24, 2004, at A1 (“*Complaints Soar*”).

²⁷ *See* Lynn Smith, *For ‘Indecency’ Watchdogs, Work is a Day Full of TV*, L.A. TIMES, May 10, 2004, at A1 (“*Indecency Watchdogs*”) (reporting that staff members “watch[] TV ... Monday through Friday, 7 ½ hours a day ... keep[ing] tabs on dramas, sitcoms and reality shows”). One group that employs at least six full-time “analysts” notes that its members “regularly monitor television broadcasts” and can help if an individual wishing to file a complaint is “caught off guard by a program.” *See* Exh. 2 at 2; *Complaints Soar* at A1. It currently is expanding its monitoring efforts and is in the process of hiring additional personnel for this purpose. *See* <http://www.parentstv.org/PTC/internships/jobs.asp>.

complaint process is warranted, it should be to make it more exacting for complainants, not more burdensome for broadcasters.

The Commission once required complainants to furnish a tape or transcript, or a significant excerpt of a program alleged to be indecent before taking any action.²⁸ As recently as early 2002, Commissioner Martin observed that “[g]enerally, unless a consumer has a tape or transcript of the program in question, the Commission takes no further action on [an indecency] complaint.”²⁹ Not long thereafter, however, the Commission began backing away from the requirement, recharacterizing it as a “general practice” of requiring a tape or transcript, the absence of which is “not fatal” to an indecency complaint. *Infinity Broad. Corp. of Los Angeles*, 17 FCC Rcd. 9892, 9895 (2002). As time went on the Commission’s “general practice” was reduced to “not a requirement” and finally became merely something “used by the Commission to assist in the evaluation of indecency complaints.”³⁰

²⁸ See, e.g., *WMCQ Licensing, Inc.*, 15 FCC Rcd. 8111, 8113 n.8 (Enf. Bur. 2000); *L.M. Communications of S.C., Inc.*, Mem. Op. & Order, DA 98-1157, ¶ 4 n.2 (MMB 1998); *Mr. Steve Bridges, Vice Pres.*, 9 FCC Rcd. 1681, (MMB 1994); *Nationwide Communications, Inc.*, 6 FCC Rcd. 3695 (MMB 1990) (noting that “[n]ormally, in evaluating indecency complaints, it is our policy to insist upon supporting evidence taken directly from the offending broadcast” to “increase[] the reliability of the complaint as a basis for possible ... inquiry or action,” but accepting a substitute recording in the case at bar). See also *Press Statement of Comm’r Gloria Tristani; Enforcement Letter Ruling Regarding Indecency Complaints Against WDCG(FM)*, 2001 WL 740587 (rel. July 2, 2001); *Press Statement of Comm’r Gloria Tristani; Enforcement Letter Ruling Regarding Indecency Complaints Against WTFX-TV*, 2001 WL 721678 (rel. June 27, 2001) (both citing dismissals of indecency complaints due to lack of tape or transcript).

²⁹ *Establishment of Rules Governing Procedures to be Followed When Informal Complaints are Filed by Consumers Against Entities Regulated by the Commission*, 17 FCC Rcd. 3919, 3954 (2002) (Statement of Comm’r Martin).

³⁰ *Infinity Broad. Operations, Inc.*, 17 FCC Rcd. 27,711, 27,715-16 (Enf. Bur. 2002) (quoting *Infinity Broad. Corp. of Los Angeles*, 16 FCC Rcd. 6967, ¶ 11 (Enf. Bur. 2001), *aff’d* 17 FCC Rcd. 9892).

By the end of last year, the Commission had begun shifting the burden from requiring complainants to provide a tape or transcript or a significant portion of the program complained of to requiring that licensees provide such evidence to defend against indecency charges.³¹ This shift of the burden was completed earlier this year as part of the above-described indecency “crackdown.”³² The transformation of the procedural requirement has resulted in a presumption that a complaint is valid unless the licensee can disprove it, effectively reversing the burden of proof in indecency cases, as the Commission acknowledges.³³ But such an approach “raises serious constitutional difficulties” when the government seeks “to impose on [a speaker] the burden of proving his speech is not unlawful.”³⁴

³¹ See, e.g., *Entercom Portland License, LLC*, 18 FCC Rcd. 25,484, 25,487 n.21 (2003) (“We find that once a complainant makes a *prima facie* case alleging the broadcast of indecent material, it is appropriate for the Bureau to seek *from the licensee* a tape or transcript not only of the material relevant to the complaint, but also of a reasonable amount of preceding and subsequent material”) (emphasis added).

³² See *Capstar*, 19 FCC Rcd. at 4961; *id.* at 4973 (Statement of Comm’r Martin) (supporting action in part on grounds it would mean “[c]omplaints should *no longer* be denied because of a lack of tape, transcript or significant excerpt”) (emphasis added). See also *Emmis Radio License Corp.*, 19 FCC Rcd. 6452 (2004).

³³ See Notice ¶ 7 n.9 (“We have held that in cases in which a licensee can neither confirm nor deny the allegations of indecent broadcasts in a complaint, we have held that the broadcasts occurred.”) (citing *Clear Channel*, 19 FCC Rcd. 1768). As the Chief of the FCC’s Enforcement Bureau has explained the process, “[i]f the station can’t refute information in the complaint, we’ll assume the complainant got it right.” Bill McConnell, *New Rules for Risqué Business*, BROADCASTING & CABLE, March 4, 2002.

³⁴ *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002); *ACLU v. Ashcroft*, 322 F.3d 240, 260 (3d Cir. 2003), *aff’d on other grounds*, 124 S. Ct. 2783 (2004). See also *Freedman v. Maryland*, 380 U.S. 51, 58-61 (1965); *Speiser v. Randall*, 357 U.S. 513, 525 (1958). Cf., *Playboy Entmt. Group, Inc.*, 529 U.S. 803, 816 (2000); *Interactive Digital Software Ass’n v. St. Louis County*, 329 F.3d 954, 959 (8th Cir. 2003).

Due process safeguards are especially important where a bare allegation can trigger the FCC's enforcement process and result in costly – and usually fruitless – investigations.³⁵ In the Notice, however, the Commission appears to assume that it is appropriate to facilitate unsupported complaints that a broadcast is indecent and to place the burden on broadcasters to disprove the allegations.³⁶ Such a lowering of procedural safeguards only encourages the onslaught of indecency complaints – whether meritorious or not – and may encourage the Commission to pursue even flimsy and vague charges of indecency that previously would have failed any threshold test.

³⁵ The Commission has elsewhere stressed that it “need not allow the administrative process to be obstructed or overwhelmed by copious ... protests.” *Amendment of Section 73.202(b) (Anniston and Ashland, Ala., et al.)*, 19 FCC Rcd. 1603, 1604 (2004). It has found this to be particularly apropos with respect to “conclusory assertions that ... material [is] obscene or indecent” that are lodged with the “primary aim ... to harass” FCC licensees. *Litigation Recovery Trust*, 17 FCC Rcd. 21,852, 21856-57 (2002).

³⁶ The Enforcement Bureau recently sent an extensive Letter of Inquiry to one member of the Broadcasters' Coalition based on the following bizarre complaint, not backed by a tape or transcript:

“This morning at approximately 7:30 am while preparing for work, I heard the radio broadcaster [name of personality] use the word ‘shit’ over open air.” After naming the date of the broadcast and the station, the complainant added “I was so mad I was shaking, and my poor daughter went into a catatonic state ... her virgin ears actually started smoking upon the utterance of that foul invective.”

The email correspondent urges the FCC to ensure the personality, the licensee, and all affiliates “that helped broadcast this filth are investigated and hopefully fined for this blatant violation of the obscenity standards you have set.” The writer finally urges the Commission to “Keep on Squelchin!” On this basis the Bureau dutifully directed the licensee to answer whether it had broadcast “the Expletive” over the named station or “any other station licensed to it” and to supply “any and all compact discs, audio tapes, transcripts or other Documents reproducing, discussing, or otherwise relating to the material so broadcast over the station.”

III. A PROGRAM TAPING AND RETENTION REQUIREMENT WOULD IMPOSE SIGNIFICANT BURDENS ON BROADCASTERS

Members of the Broadcasters' Coalition, like other licensees, would bear the brunt of any Commission rule that requires them to tape and retain the material that airs on their respective stations. Putting aside the chilling effect and other First Amendment burdens arising from the censorial threat posed by such rules, the requirements will impose unwarranted economic and administrative burdens. The costs of retaining tapes of every moment of airtime for any television or radio station quickly mount, particularly as one considers retention periods of 60 days, 90 days, or even longer. Notice ¶ 7. The burden that potential taping and retention requirements pose clearly is insupportable.

The Commission in the past has considered whether to require licensees to retain recordings of their programs and has concluded the purported benefits do not justify the burdens. In the late 1970s the FCC entertained measures that, like the current proposal, were intended to enhance its ability to regulate broadcast content, including such policies as the fairness doctrine, personal attack rules, commercial limits, and children's television rules, among others. *Petition for Rulemaking to Require Broadcast Licensees to Maintain Certain Program Records*, 64 F.C.C.2d 1100 (1977). Proponents of a taping requirement argued at the time that "the public needs an electronic library as a reference tool to fully review and assess the types and adequacy of programming." *Id.* at 1111. Opponents pointed to the cost and administrative burden, noting it would impose "an additional chore ... without a consequent benefit to the public." *Id.* Broadcasters also argued that removing licensee discretion from the decision of whether or not to make and retain tapes would exert a chilling effect on free expression.³⁷

³⁷ *Id.* at 1112-13. The Commission declined to address the constitutional issues because they were being addressed in another proceeding at the time. However, it acknowledged "concern

Though the Commission found the record to be disputed regarding the costs of a taping requirement,³⁸ it nevertheless was “not convinced that the public benefits outweigh the costs imposed.” *Id.* at 1113. Notwithstanding differences of opinion as to the exact costs involved, it found “there is no doubt that production, retention, retrieval and playback of the recordings would cause almost every station to expend money which is now available for public service programming or other purposes.” It also was concerned that the burdens of a program taping rule “would fall in a disproportionately heavy manner on very small stations.” *Id.* Given its additional finding that its rules “can be enforced without these additional requirements,” the Commission concluded there was an insufficient regulatory benefit to support the obvious burdens. The Commission should reach the same conclusion in this proceeding.

Today, a program taping and retention requirement would still impose substantial financial burdens on broadcasters, sufficient to outweigh any potential benefits, notwithstanding the Notice’s suggestions to the contrary. Notice ¶ 9 (asking whether digital recording and storage reduces program retention costs). It is still the case that program recording and retention requirements would require the expenditure of funds that otherwise could be dedicated to programming and/or providing other service to the public. Almost from the day the Notice issued, the Commission’s Electronic Comment File System has seen a growing record in this docket attesting to the cost of the instant proposal. One small broadcaster estimated the requirement would cost “in the thousands” of dollars, plus the cost of hiring “at least another ½

that the proposed rule might have a chilling effect on free speech and press cannot easily be dismissed.” *Id.* at 1113 n.16. This issue is discussed *infra* at Section IV.A.

³⁸ The Commission cited comments estimating the cost of recording and retaining videotapes would range from \$120,000 per television station over a two-year period to more than \$382,000. The cost to radio stations was estimated at about \$4,000 per station per year, not counting costs associated with personnel, cataloging, filing, storage, retrieval and supervision. *Id.* at 1112.

time employee,” not to mention costs for archiving and tape storage.³⁹ Others estimated cost of \$6,000 to \$10,000 per station for a computerized system that includes a backup to ensure recording in the event of equipment failure, plus an estimated \$4,500 per station each year thereafter to operate it.⁴⁰ Yet another licensee calculated she would have to allocate 5 percent of total staff time to recording programming, at a cost of more than \$400 per month. Comment of KVAK Radio, MB Docket No. 04-232, filed Aug. 10, 2004, at 1. By way of reference, KVAK explained that the station would need an additional five new advertisers just to cover the costs of recording programming. *Id.* Numerous commenters indicated costs associated with such a requirement will directly affect their ability to provide local news and public service programming.⁴¹

Projections by the members of the Broadcasters’ Coalition confirm that the above-cited costs are real and, potentially, massive. On the television side, Viacom has found, for example, that it would cost approximately \$40,000 for each high definition television station, and \$30,000 for each standard definition station, just for equipment to implement the requirement.⁴² These figures are based on deploying a high-end personal computer with a special video card that permits storage of audio-video signals on a rewritable drive using an automated system that will

³⁹ Comment of KRLN/KSTY Radio, MB Docket No. 04-232, filed Aug. 3, 2004, at 1.

⁴⁰ Comments of James P. Wagner, MB Docket No. 04-232, filed July 30, 2004, at 2-4; Comment of Elyria-Lorain Broad. Co., MB Docket No. 04-232, filed Aug. 16, 2004, at 1.

⁴¹ Comment of KDQN, MB Docket No. 04-232, filed Aug. 9, 2004, at 1; Comment of KERO-TV, MB Docket No. 04-232, filed Aug. 5, 2004, at 1; Comment of Larry Fuss, MB Docket No. 04-232, filed Aug. 9, 2004, at 1; Comment of Taylor University, MB Docket No. 04-232, filed Aug. 6, 2004, at 1. *See also generally* Comment of Hon. Mike Ross, MB Docket No. 04-232, filed July 21, 2004, at 1.

⁴² These amounts are based on the cost of systems presently in use by broadcasters other than the Broadcasters’ Coalition of which members of Viacom’s technical staff are personally aware.

continuously record – and purge 60 days later – the whole of each station’s output (with additional drives required for 90-day retention) in near-VHS quality MPEG-4 files,⁴³ and station personnel time to create and install the system. Each station would require two systems for each program stream to provide redundancy to ensure compliance in the event of equipment problems. Smaller broadcasters that cannot take as much advantage of economies of scale or scope may face even higher per-station costs approaching \$100,000, as Sarkes Tarzian reports.⁴⁴

With respect to radio, Citadel projects that it, for example, would have to install for its stations a system to digitally record each cluster of stations, at an estimated cost of \$10,000 to \$12,000 to acquire and install equipment capable of recording 90 days of audio for multiple stations, for a company total of \$540,000. Even a system that uses a traditional personal computer and hard-disk-based storage, Beasley estimates, would cost \$1,250 per cluster, plus an additional \$750 per station (for a system-wide cost of approximately \$44,000), assuming a 90 day retention period, and these costs increase significantly with a longer retention period and/or permanent archiving.⁴⁵

Significantly, all the foregoing represents only the upfront costs to implement a taping and retention program. There also would be significant staffing, training, recruitment, labeling, cataloging, filing, storage, retrieval and recycling costs associated with a program retention requirement. In addition, copies reviewable by requesting members of the public would have to

⁴³ The cost increases approximately ten-fold if the rules require retaining broadcast-quality recordings of programming.

⁴⁴ Sarkes Tarzian further notes (as did Viacom) that the cost estimate doubles to the extent it is necessary to include redundancy protection in the system.

⁴⁵ In addition to equipment costs, stations will incur labor and other costs for installation, configuration and other set-up of the hardware. Entercom estimates, for example, that this cost alone could exceed \$20,000.

be made from the electronic storage equipment in which the programs are maintained, and this would add another layer of expense. Sarkes Tarzian also estimates that it eventually would need to rent climate-controlled off-site storage space, at a current cost of \$2,750 per year, to store the recordings.

When such expenses are considered on an industry-wide basis, the potential aggregate costs are enormous. For example, the National Association of Broadcasters (“NAB”) very conservatively estimates that equipment costs alone for the radio industry would exceed \$18 million. This figure is based on the minimum estimated cost for equipment and does not include operating expenses and personnel costs.⁴⁶ Using NAB’s mid-range estimate, which is more consistent with the figures set forth by other commenters, the cost to the radio industry could exceed \$100 million.⁴⁷ For television, NAB projects costs of between \$15.5 and 18 million to record and retain a single channel of programming on the nation’s 1700 TV stations, and between \$23.3 and \$54.5 million for multicast channels, depending on the number of programming streams. NAB Comments at 15-16 & n.27. These huge burdens would be imposed despite the fact that a miniscule number of programs are the subject of complaints. And of that small number, only about one percent are dismissed for lack of substantiation.

⁴⁶ See Comments of the National Association of Broadcasters, MB Docket No. 04-232 (“NAB Comments”), at 11-18. NAB says that “equipment costs vary substantially, ranging from \$1,340 to \$10,000” per station, and that “[t]hese estimates *exclude* the cost of installation, staff training, and any additional employee costs.” *Id.* at 12 (emphasis in original). It then takes the *lowest possible* equipment cost of \$1,340 per station to derive what it calls “a *low* estimate of the equipment costs to the radio industry” of just over \$18 million. *Id.* at 13 (emphasis in original).

⁴⁷ Using the mid-point estimate provided in NAB’s comments, of \$6425 for (90-day) storage cost and \$850 for other costs, *id.* at 14, the figure for radio stations expands to over \$98 million. See also Joint Comments of the North Carolina Association of Broadcasters and Virginia Association of Broadcasters, MB Docket No. 04-232, at 11 (estimating equipment costs of \$5,000 to \$15,000 per radio station).

IV. A RECORDING REQUIREMENT TO FACILITATE INDECENCY COMPLAINTS WOULD VIOLATE THE FIRST AMENDMENT

The FCC regularly claims that the First Amendment is a “critical limitation” on its ability to enforce Section 1464,⁴⁸ and reviewing courts often reinforce the concept that the FCC must “walk a tightrope” whenever it engages in content regulation.⁴⁹ Specifically in the context of regulating indecent broadcasts, reviewing courts have approved the Commission’s authority to regulate speech only to the extent the agency exercises “caution” and “restraint” in its enforcement policies.⁵⁰ Courts have reined in the Commission in the past when it has failed to show sufficient sensitivity to First Amendment concerns and when its constitutional analyses are “more ritual than real.”⁵¹ In this instance, a taping requirement would tip the balance away from “caution” and “restraint” by imposing significant burdens and reinforcing the message that “Big Brother is Watching.”

⁴⁸ *Golden Globe Awards*, 19 FCC Rcd. at 4977.

⁴⁹ *CBS, Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 102, 117 (1973); *Banzhaf v. FCC*, 405 F.2d 1082, 1095 (D.C. Cir. 1968), *cert. denied sub. nom. Tobacco Inst., Inc. v. FCC*, 396 U.S. 342 (1969).

⁵⁰ *FCC v. Pacifica Found., Inc.*, 438 U.S. 726 (1978) (Powell, J., concurring) (“the Commission may be expected to proceed cautiously [in enforcing its indecency rules], as it has in the past”); *Action for Children’s Television v. FCC*, 852 F.2d 1332, 1340 n.14 (D.C. Cir. 1988) (“*ACT I*”) (“the potential chilling effect of the FCC’s generic definition . . . will be tempered by the Commission’s restrained enforcement policy”).

⁵¹ *ACT I*, 852 F.2d at 1341. *See id.* at 1343 n.18, 1344 (“the FCC may regulate [indecent] material only with due respect for the high value our Constitution places on what the people say and hear,” and such regulation cannot be accomplished constitutionally “unless the FCC adopts a reasonable safe harbor rule”); *Action for Children’s Television v. FCC*, 932 F.2d 1504 (D.C. Cir. 1991) (“*ACT II*”) (striking down a rider to a 1989 appropriations bill that required the FCC to eliminate the indecency “safe harbor” and to enforce Section 1464’s indecency ban 24 hours per day). Although the Supreme Court has not yet had an opportunity to reconsider the substantive indecency rules in the context of broadcasting, more recent decisions relating to non-broadcast media raise questions about how far the Commission may go in this sensitive area. *Playboy Entmt. Group*, 529 U.S. at 826; *Reno v. ACLU*, 521 U.S. 844, 871-881 (1997); *Denver Area Educ. Telecomms. Consortium v. FCC*, 518 U.S. 717, 744 (1996).

A. A Program Taping Requirement Would Increase the Chilling Effects of “Regulation by Raised Eyebrow”

The Commission is proposing to impose a taping requirement for the sole purpose of regulating broadcast content. The primary purpose of the proposed requirement is to “increase the effectiveness” of the government’s restrictions on broadcast indecency. But the Commission also suggests that such a requirement “can be useful to enforcement of other types of complaints based on program content,” such as children’s TV commercial limits and sponsorship ID restrictions. Notice ¶ 11. Whenever the Commission interprets its statutory authority for the purpose of regulating programming content, it raises First Amendment concerns. *See MPAA v. FCC*, 309 F.3d 796, 805 (D.C. Cir. 2002). *See also Accuracy in Media v. FCC*, 521 F.2d 288, 296-297 (D.C. Cir. 1975) (interpreting the Act to create “a more active role by the FCC in oversight of programming . . . threaten[s] to upset the constitutional balance”).

Such concerns are particularly acute with respect to taping requirements because they reinforce the government’s ability to supervise content more intensively. Accordingly, in *Community-Service Broadcasting of Mid-America, Inc. v. FCC*, 593 F.2d 1102, 1105 (D.C. Cir. 1978) (*en banc*), the D.C. Circuit struck down a statutory requirement that noncommercial broadcasters maintain an audio recording for 60 days of any program in which an issue of public importance is discussed. The majority invalidated the provision, finding that it “places substantial burdens on noncommercial educational broadcasters and presents the risk of direct governmental interference with program content.”⁵² The court also found that “no substantial

⁵² *Community-Service Broad.*, 593 F.2d at 1105. The taping requirement was adopted during the Nixon Administration as part of an effort to exert greater control over programming on public broadcasting and to thereby influence its content. *See* Public Broadcasting Hearings on S. 1090 Before the Subcomm. on Communications of the Senate Comm. on Commerce, 93d Cong., 1st Sess. 113-114 (1973). *See also Network Project v. Corporation for Public Broad.*, 398 F. Supp. 1332, 1335 (D.D.C. 1975) (claims dismissed on jurisdictional grounds), *aff’d in part and rev’d in part*, 561 F.2d 963 (D.C. Cir. 1977).

governmental interest has been shown on the other side of the constitutional balance.” *Community-Service Broad.*, 593 F.2d at 1105. As that case was being litigated, the FCC rejected a proposal that would have required commercial broadcasters to retain tapes of their programs. The Commission noted that “the concern that the proposed rule might have a chilling effect on free speech and press cannot be easily dismissed,” but deferred judgment on the constitutional issue because it was being considered by the court in *Community-Service Broadcasting. Petition for Rulemaking to Require Broadcast Licensees to Maintain Certain Program Records*, 64 F.C.C.2d at 1113. In ultimately deciding the issue before it, the D.C. Circuit noted that the FCC “concluded that the burdens involved outweighed any benefits of the required recording and declined to impose this obligation on commercial broadcasters.” *Community-Service Broad.*, 593 F.2d at 1122.

Although the majority opinion focused on equal protection problems created by the special requirement for noncommercial broadcasters, it nevertheless compared its equal protection analysis to the relevant First Amendment test, noting that “where, as here, fundamental rights are involved, stricter scrutiny is appropriate.” *Id.* Additionally, Chief Judge Skelly Wright, who authored the majority opinion, also discussed the First Amendment implications of a recording requirement. Along with Judge Wilkey, he concluded that the taping requirement “in its purpose and operation serves to burden and chill the exercise of First Amendment rights by noncommercial broadcasters.” *Id.* at 1110 (Wright, C.J.). In reaching this conclusion, Judge Wright addressed many of the issues that are relevant here. He noted that “the operation of the taping requirement serves to facilitate the exercise of ‘raised eyebrow’ regulation” because “it provides a mechanism, for those who would wish to do so, to review

systematically the content of . . . programming” and “based on such review they may make use of existing means for communicating their displeasure.” *Id.* at 1116.

Judge Wright wrote that the costs involved in “responding to FCC inquiries or participating in license renewal hearings, as well as the uncertainties involved, independently exert a chilling effect on the licensee’s willingness to court official displeasure.” *Id.* He observed that a “[c]hilling effect is, by its nature, difficult to establish in concrete terms; the absence of any direct actions against individuals assertedly subject to a chill can be viewed as much as proof of the success of the chill as of evidence of the absence of any need for concern. To be sure, *where actual instances of harassment are established, or where past experience with similar regulation yields concrete evidence of a successful chill, the case is a stronger one, and the burden on government to justify its regulation must be heavier.*” *Id.* at 1118 (emphasis added).

A chilling effect can exist even when a taping requirement “neither creates any new content restrictions . . . nor establishes any new mechanism for enforcement of existing standards” to the extent the measure was adopted for the purpose of exerting greater control over content. *Id.* at 1115. In analyzing such matters, the court’s “ultimate concern is not so much what government officials will actually do, but with how reasonable broadcasters will perceive regulation, and with the likelihood they will censor themselves to avoid official pressure and regulation.” *Id.* at 1116. *See also id.* at 1124 (Robinson, J., concurring) (“Judge Wright’s opinion presents a persuasive analysis of the chill that [the taping requirement] could forbode for First Amendment expression.”).

In the current environment, with the FCC enforcing broader, more open-ended standards and imposing heightened penalties, the taping requirement would have a widespread chilling effect. Broadcasters already are taking significant actions to self-censor their programming and

to cut back on live programming, and this would only increase with a taping requirement. Such a requirement will have a heightened effect as the Commission exerts closer ongoing oversight of programming. Former Commissioner Glen O. Robinson has described “regulation by the lifted eyebrow” as a “Sword of Damocles” over the broadcaster’s head. “If the sword does not often fall, neither is it ever lifted and the *in terrorem* effect of the sword’s presence enables the Commission to exercise far-reaching powers of control over the licensee’s operations.”⁵³ “If the Government can require the most pervasive and effective information medium in the history of this country to make tapes of its broadcasting for possible government inspection, in its own self-interest that medium will trim its sails to abide the prevailing winds.” *Community-Service Broad.*, 593 F.2d at 1123 (Wright, C.J.).

B. A Program Taping Requirement Would Fail Even Intermediate First Amendment Scrutiny

At a minimum, a taping requirement must satisfy intermediate First Amendment scrutiny. *Community-Service Broad.*, 593 F.2d at 1114. Under this level of scrutiny, the government is required to show that its regulations will directly and materially serve an important interest, and that that policy is narrowly tailored and will restrict no more speech than necessary. *Turner Broad. Sys. v. FCC*, 520 U.S. 180, 189-90 (1997) (“*Turner II*”). See *United States v. O'Brien*, 391 U.S. 367, 377 (1968). As the majority noted in *Community-Service Broadcasting*, in evaluating the constitutionality of a taping and retention requirement, “a governmental interest, no matter how substantial in and of itself, cannot serve to justify a statutory classification when the interest is not in fact one which is truly furthered by the statute.” 593 F.2d at 1123.

⁵³ Glen O. Robinson, *The FCC and the First Amendment: Observations on 40 Years of Radio and Television Regulation*, 52 MINN. L. REV. 67, 119 (1967).

For purposes of this analysis, the government cannot assume that the relevant interest is a generalized goal of “protecting children” since the Notice states that the Commission does not intend to examine the substance of its indecency rules. Notice ¶ 11 (“we do not raise for comment in this proceeding our substantive standards for indecency or any other rules that may be implicated”). Rather, the Commission has a constitutional duty to demonstrate a substantial interest in adopting a taping and retention requirement in order to materially “improve[e] our enforcement process.” *Id.* ¶ 1. In this connection the government’s burden is to show the effect of unsubstantiated complaints on the overall indecency enforcement regime is “real, not merely conjectural.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (“*Turner I*”). That is, it must “show a record that validates *the regulations*, not just the abstract statutory authority.” *Time Warner Entmt. Co., L.P. v. FCC*, 240 F.3d 1126, 1130 (D.C. Cir. 2001) (emphasis in original). Thus, the fact that the FCC is empowered to enforce broadcast indecency rules as a general matter does not alone demonstrate an interest sufficient to require all broadcasters to record and retain all their programming. *Id.* (“Constitutional authority to impose some [regulation] is not authority to impose any [regulation] imaginable.”).

Regardless of how the Commission ultimately may characterize its interest, it is required under intermediate scrutiny to demonstrate that its proposed regulation will serve that interest in a “direct and material way.” *Turner I*, 512 U.S. at 664. In applying this requirement courts will invalidate restrictions on speech that provide “only ineffective or remote support for the government’s purpose.” *Greater New Orleans Broad. Ass’n, Inc. v. United States*, 527 U.S. 173, 188 (1999). *See also City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993). Here, the Commission’s own data undermines its ability to make any such showing. It demonstrates that, at maximum, 1 percent of the dismissals of complaints may be attributed to the absence of a

tape or transcript. And even this number is exaggerated because it fails to account for other defects that explain the dismissals. Moreover, the Commission has the burden to demonstrate that the taping and retention requirement would cure the asserted problem.⁵⁴ In this regard, “the First Amendment does not permit us to tolerate even minimal burdens on protected rights where no legitimate government interest is truly being served.” *Community-Service Broad.*, 593 F.2d at 1122 (Wright, C.J.).

The Commission’s most significant hurdle, however, is the extent to which a taping requirement is an example of regulatory overkill. As one broadcast commenter put it, “[a]s an Oklahoma broadcaster for over 40 years, I know of not one incident of indecency in Oklahoma by a radio or television station,” yet the proposed rule would require all licensees to record all programming nonetheless.⁵⁵ The sheer number of hours that must be recorded in response to such a rule is staggering. If the Commission requires that tapes be retained for 90 days, the rule would require the recording and storage of over 26 million hours of programming each calendar quarter.⁵⁶ As explained above, such a requirement would impose significant burdens on licensees. Yet it would impose this mammoth undertaking despite the fact that complaints alleging indecent content might represent – at most – an hour or two of that time, and only a tiny

⁵⁴ Obviously, in cases where a complaint is filed more than 60 or 90 days after a broadcast, or if the FCC’s inquiry is outside that period, a taping and retention rule will have no regulatory benefit whatsoever.

⁵⁵ Comments of Carl C. Smith, MB Docket No. 04-232, filed July 13, 2004, at 1.

⁵⁶ This figure assumes that programming between 6 a.m. and 10 p.m. would be recorded and the tapes retained for a period of 90 days, based on station totals as reported by the Commission, not counting translator or booster stations. See FCC News Release, *Broadcast Station Totals as of March 31, 2004* (April 27, 2004).

fraction of those complaints would fail for lack of substantiation.⁵⁷ Judge Wright observed in *Community-Service Broadcasting of Mid-America* that “[s]uch ‘overinclusiveness’ of the statute’s application [in imposing a taping requirement] is inconsistent with *O’Brien*’s additional requirement that the government regulations be no more restrictive than is essential to further the substantial goals served.” 593 F.2d at 1120. In this circumstance, the constitutional barrier to imposing such an overly burdensome rule appears to be insurmountable.

V. CONCLUSION

The Broadcasters’ Coalition urges the Commission to reject the proposed taping and retention requirement as unnecessary and excessively burdensome. Instead, the Commission should use this proceeding as an opportunity to reform its complaint procedures to reduce abuses of the process by groups intent on exercising a “heckler’s veto.” It is all the more important to keep “the starch in the standards” where, as here, “the daily politics cries loudest for limiting what may be said.” *Denver Area Educ. Telecomms.*, 518 U.S. at 774 (Souter, J. concurring).

⁵⁷ See generally Exh. 1 (Thus far in 2004, roughly 530,000 complaints on file relate to only 23 programs).

Respectfully submitted,

**Beasley Broadcast Group, Inc.
Citadel Broadcasting Corporation
Clarke Broadcasting Corp.
Entercom Communications Corp.
Fox Entertainment Group, Inc.
Galaxy Communications, L.P.
Multicultural Radio Broadcasting, Inc.
Radio One, Inc.
Sarkes Tarzian, Inc.
Viacom Inc.
Washington State Association
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APPENDIX

Beasley Broadcast Group, Inc. is the nation's 17th largest radio broadcasting company. Headquartered in Naples, Florida, Beasley Broadcast Group, Inc. owns or operates 41 radio stations (26 FM and 15 AM) in ten large and mid-sized markets in the United States.

Citadel Broadcasting Corporation is a radio broadcaster serving primarily mid-sized markets in the United States. Through its operating subsidiary, Citadel Broadcasting Company, Citadel owns and/or operates 214 radio stations in 45 markets.

Clarke Broadcasting Corporation is a small family-owned company that has been in business since 1956. It currently owns and operates three radio stations in Tuolumne County, California.

Entercom Communications Corp. is the nation's fourth largest radio broadcaster, operating in Boston, Seattle, Denver, Portland, Sacramento, Kansas City, Indianapolis, Milwaukee, New Orleans, Norfolk, Buffalo, Memphis, Providence, Greensboro, Greenville/Spartanburg, Rochester, Madison, Wichita, Wilkes-Barre/Scranton, Gainesville/Ocala, and Longview/Kelso, WA.

Fox Entertainment Group, Inc. is a multi-faceted entertainment company with operations in four business segments: (1) the production and distribution of filmed entertainment, including the production of programming for television and cable distribution; (2) television station ownership; (3) the FOX Network; and (4) cable network programming channels.

Galaxy Communications, L.P., owns and operates 13 radio stations in the Albany, NY, Syracuse, NY and Utica-Rome, NY markets.

Multicultural Radio Broadcasting, Inc. was founded in 1972 and has grown to be the largest multi-language company in the USA with 47 radio stations, television, and media publications. Headquartered in New York, Multicultural Radio Broadcasting delivers cultural-

relevant content in a variety of languages including Mandarin, Cantonese, Spanish, Korean, and English.

Radio One, Inc. (www.radio-one.com) is the nation's seventh largest radio broadcasting company (based on 2003 net broadcast revenue) and the largest company that primarily targets African-American and urban listeners. Radio One owns and/or operates 68 radio stations located in 22 urban markets in the United States and reaches greater than 13 million listeners every week. Radio One also programs “XM 139 THE POWER” on XM Satellite Radio and owns approximately 40% of TV One, LLC, an African-American targeted cable channel, which is a joint venture with Comcast Corporation.

Sarkes Tarzian, Inc., owns and operates 4 radio stations and 2 television stations in the Chattanooga, TN, Reno, NV, Ft. Wayne, IN and Bloomington, IN markets.

Viacom, Inc. is a leading global media company, with preeminent positions in broadcast and cable television, radio, outdoor advertising, and online. With programming that appeals to audiences in every demographic category across virtually all media, the company is a leader in the creation, promotion, and distribution of entertainment, news, sports, music, and comedy. Viacom's well-known brands include CBS, MTV, Nickelodeon, Nick at Nite, VH1, BET, Paramount Pictures, Infinity Broadcasting, Viacom Outdoor, UPN, TV Land, Comedy Central, CMT: Country Music Television, Spike TV, Showtime, Blockbuster, and Simon & Schuster.

Washington State Association of Broadcasters is a not-for-profit trade association organized under the laws of the state of Washington for the purpose of the advancement of the broadcasting industry in the state of Washington, to protect and promote generally the interests of the broadcasting industry, and to foster a legal and regulatory environment conducive

to the welfare and benefit of the broadcasting industry and its mandate to broadcast in the public interest, convenience and necessity. Its membership includes 156 radio stations and 23 television stations licensed by the Federal Communications Commission to serve local communities situated in the state of Washington.

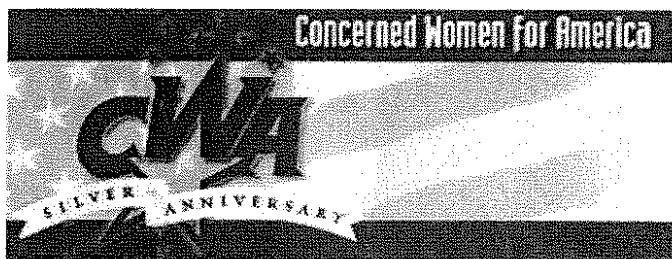
EXHIBIT 1

FCC Indecency Complaints Compared to Number of Programs

Year	Complaints	Programs
2004	530,885	23
2003	240,350	318
2002	13,922	345
2001	346	152
2000	111	101
1999	5,853	N/A
1998	32,300	N/A
1997	828	N/A
1996	950	N/A
1995	947	N/A
1994	12,817	N/A

Source: Letter from Chairman Michael K. Powell to Hon. John D. Dingell, March 2, 2004.

EXHIBIT 2

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Thursday, August 26

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So, You Want To File a Broadcast Indecency Complaint?

4/19/2002

Printer Friendly
Version

By Martha W. Kleder

The most effective action against indecency remains the formal complaint.

"The most important piece of information I can give you is to include your local congressman in the process, every step of the way." — Citizen activist David Smith

New rules proposed by the Federal Communications Commission (FCC) would make filing a broadcast indecency complaint as easy as picking up the telephone or sending an e-mail.

That system, however, handled by the Consumer and Government Affairs Bureau, does not carry as much weight as the existing process.

The most effective action against indecency remains the formal complaint. Unlike other areas under the FCC's charge, such as complaints over telephone bills or poor cable reception, there is no official form for a formal indecency complaint.

"One of the few fortunate things about dealing with the FCC is that they do not require strict adherence to form in the complaints, and they even say that in some of their decisions," said veteran FCC complaint filer Judge Tom North of Michigan. "So a legibly typed letter is sufficient to get a complaint in as long as it contains all the information."

GATHER THE NECESSARY INFORMATION

What is "all of the information" you ask? Just a simple list.

- The call letters of the radio or television station airing the program in your area.
- The city in which that station is licensed.
- The name of the program on which the offensive material was heard (these are often syndicated programs like "The Howard Stern Show", or "The Lex and Terry Show" on radio, or "Boston Public," or "The Victoria's Secret Fashion Show" on television.)
- The day and exact time the offensive material aired.
- And the most important ingredient in official indecency complaints: a detailed description of the offending material.

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of Enforcement

Q&A: How to
Answer Liberals
the Rick Santoru
Controversy

With regard to the last item — the details of the offending material — it is vital that the FCC

be given as much information as possible about what was actually said, and the context in which it occurred. According to the FCC's Consumer and Governmental Affairs Bureau, with respect to indecency investigations, "context is key."

"The Commission staff must have sufficient information regarding what was actually said during the alleged broadcast, the meaning of what was said, and the context in which it was stated," reads the FCC instructions on filing an indecency complaint.

While a tape of the broadcast is not required by the FCC, at least a partial detailed transcript is. Therefore, recording the broadcast is recommended, as it makes it easier to provide the context.

But even if you are caught off guard by a program, transcripts are often available from many pro-family organizations. The Media Research Center and its affiliate, The Parents Television Council, regularly monitor television broadcasts, and can provide the context you need.

Likewise, the American Decency Association and the American Family Association regularly keep tabs on "The Howard Stern Show," while Citizens for Community Values monitors "Mancow's Morning Madhouse."

Keep a copy of the tape or full transcript so you can refer to it throughout the complaint process. The documentation you provide the FCC as part of your complaint becomes a part of federal records and is not returned. A copy in reserve could come in handy if the FCC dismisses your complaint – but we'll discuss that later.

WHAT QUALIFIES AS INDECENT?

Both indecent and obscene programming are regulated by the FCC. Obscene material is not protected by the First Amendment and cannot be broadcast at any time.

Obscenity can be determined by the three-prong test set forth by the U.S. Supreme Court, known as the Miller test. For material to qualify as obscene:

- An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
- The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and
- The material, taken as a whole, must lack serious literary, artistic, political, or scientific value.

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Indecency, on the other hand, is defined more broadly, and is restricted to hours when children would likely not be a part of the audience, specifically 10 p.m. to 6 a.m.

The FCC defines indecency as:

"Language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory references that do not rise to the level of obscenity. As such, the courts have held that indecent material is protected by the First Amendment and cannot be banned entirely. It may, however, be restricted in order to avoid its broadcast during times of the day when there is a reasonable risk that children may be in the audience."

The Commission has established an Indecency Policy Statement, setting forth a lesser three-prong test for indecency. Those three factors are:

- "The language or depiction, in context, depicts or describes sexual or excretory organs or activities." The language need not be direct. The Commission has repeatedly held that "innuendo may be patently offensive within the meaning of our indecency definition if it is understandable and clearly capable of a specific sexual or excretory meaning, which, in context, is inescapable."
- The broadcast must be "patently offensive as measured by contemporary community standards for the broadcast medium." – While fines are levied against local broadcasters, the community standard used by the FCC is a broad, national one.
- "The material appears to pander, or is used to titillate or shock." – News broadcasts and medical shows generally do not meet this third criteria.

DRAFTING YOUR COMPLAINT LETTER

Compile this information into a letter, addressed to David H. Solomon, Chief, Enforcement Bureau. Mail your complaint to:

Federal Communications Commission
Enforcement Bureau, Investigations and Hearings
Division
445 12th Street, SW, Room 3-B443
Washington, DC 20554

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Citizens for Community Values (CCV) has a sample letter posted on their Web site, only be sure to mail your letter to the address above, as the FCC has just completed a massive reorganization – shifting many duties to different offices.

TIPS FROM AN INDECENCY COMPLAINT PRO

David E. Smith of Chicago has made a name for himself at Emmis Communications, but not for what you might think. Smith is best known for lodging many successful indecency complaints against the Emmis syndicated show "Mancow's Morning Madhouse."

"Begin by stating outright that you are filing an OFFICIAL complaint, and expect a timely response," Smith told *C&F Report*. Without this, FCC staff could very likely misfile your letter and never respond.

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"The most important piece of information I can give you is to include your local congressman in the process, every step of the way. Talk to the Congressional staff person who handles FCC issues," Smith said. "Ask them to help you get a response from the FCC. Copy him or her with each piece of correspondence you get and send."

"Don't ask them to take a side in your complaint; all you want is their help as your federal representative to get the FCC to acknowledge your complaint, and to respond," Smith added. "However, raising the congressman's awareness of what is being broadcast, and the FCC's lack of enforcement, doesn't hurt."

Smith said you can even send copies of your complaint to members of the House and Senate Commerce Committees, which oversee the FCC.

WHAT HAPPENS NEXT?

Once received, the letter will be reviewed by FCC staff to determine if you have provided enough information to support your claim of an obscenity or indecency violation. If you have not, the FCC will dismiss your complaint.

If you have provided adequate information and context, the FCC will then begin an investigation. The first step of that investigation is sending a letter of inquiry to the broadcast station. That action gives the broadcaster a chance to either

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dispute your facts or to argue that the broadcast does not violate broadcast decency standards.

The FCC will then review both sides and issue an opinion. If the FCC determines that a violation has occurred, it will issue a Notice of Apparent Liability (NAL) for Forfeiture against the station. In other words, it will impose a fine.

Should the review determine that a violation of broadcast decency standards did not occur, your complaint will be denied.

In any case, the FCC's Enforcement Bureau should respond to you with a letter explaining their decision.

TIME FOR APPEALS

If your complaint is upheld and an NAL is issued against the station, the broadcaster will have 30 days to file an appeal. A good example of this is the FCC's recent reversal of a fine against Citadel Broadcasting Company's KKMJ in Pueblo, Colorado – better known as the "Real Slim Shady"/Eminem song case.

Likewise, if your complaint is dismissed or denied, you have appeal options as well.

While the FCC does not highlight this process, it has garnered several fines against radio shock jocks.

"As far as appeals, the process in the regulations is more formal," said Judge North. "The process depends on the nature of the issue being raised."

If your complaint was dismissed due to lack of information, you have thirty (30) days to re-file with additional information. If your complaint is investigated and then denied, you also can appeal.

"Don't fret," says indecency activist David Smith. "If, after you've considered their response, you still believe that the broadcast clearly violated FCC guidelines, you can write a letter (within 30 days) appealing their decision."

That letter can take the form of either a petition for reconsideration of the staff action or an appeal to the full commission. If you choose the latter, your case will be reviewed by the FCC Commissioners themselves rather than Enforcement Bureau staff.

"My appeals have been very simple," said Smith. "I just ask them to review my complaints again, clarifying why I thought they violated FCC standards."

Judge North filed an indecency complaint against a local television station for the showing of full frontal nudity in airing an unedited version of *Schindler's List* in February 1997.

"My advice in the dismissal of a complaint is to appeal it and to follow the regulations to the 't.' That way, your appeal won't be dismissed on procedural grounds," said North. I made a motion for reconsideration in the *Schindler's List* matter, which got it to the full commission. However, they ruled against me."

One last bit of advice that Smith says has been key to his persistence: "Pray as if all depended on God."

GUARD YOUR EXPECTATIONS

While Smith has enjoyed some success in bringing indecency complaints before the FCC, he put in a lot of work to achieve them. Smith filed his first two complaints in June 1997 — both

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were dismissed by the FCC. However, efforts targeted at advertisers of "Mancow's Morning Madhouse" caused a revenue drop-off.

Smith began a second round of FCC indecency complaints in November 1999. Within a span of six months he had filed a total of 30 complaints. All were initially dismissed by the FCC. Smith appealed 11 of those.

Upon appeal, the FCC launched an investigation into five of the 11 complaints. Two of those investigations resulted in fines issued on January 7, 2002.

Most recently, Smith filed nine indecency complaints, of which the FCC investigated seven. On March 20, 2002 the FCC issued fines for three of those seven complaints.

Judge North has encountered roadblocks over other media complaints.

"I have seen firsthand time and time again how they absolutely bend over backwards to find a way to dismiss EVERY TV indecency complaint, and they take a year or two to do it," North said.

"I have actually seen them interpret court decisions in a way that favors dismissal of the complaint, and then on another complaint, misinterpret the same decision 180 degrees in the other direction to 'justify' an order to dismiss," he added.

"When the full commission ruled against me in the *Schindler's List* matter, there was a limited time to appeal it to the court — only about 20 days. But the FCC conveniently did not mail me their decision until AFTER the appeal period expired!," North said.

Others have filed official complaints with the FCC, following all of the correct procedures, and have never even received a response.

On March 21, 2002, the FCC dismissed 20 complaints about ABC's "Victoria's Secret Fashion Show." In response, Brent Bozell, president of the Parent's Television Council, said, "What will it take for the FCC to wake up and do its job? According to Morality in Media, the FCC has not fined a television station in 20 years. That's a pretty telling indictment of just how seriously the FCC takes its responsibility to the American public."

Bozell stressed that the main reason America is swamped with broadcast indecency is not the failure of the public to complain, but the FCC's failure to investigate and act on those complaints.

Smith said the public shouldn't be deterred by this uphill battle.

"Patience and persistence is the key," he said. "Remember, nothing is moved unless it is pushed." If those filing complaints are willing to "push" the issue with constant appeals and oversight of federal officials, progress can be made.

IN CLOSING

Once you file a complaint you should monitor the FCC's "Daily Digest," available on the FCC's Web site, or via e-mail, for their action. The agency's action, however, may take a year or more.

Given that time lapse, it may be helpful to keep a pro-family organization apprised of your complaint. Groups like Concerned Women for American and the Parents Television Council monitor the FCC as a part of their regular activities, and can inform you when an action is posted in your case.

These groups can bring your complaint to the attention of members of Congress, as well as

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EXHIBIT 3



PUBLICATIONS

Because our children are watching

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For more info about a Press Release or to schedule an interview with L.Brent Bozell III or another PTC spokesperson please contact: Katie Wright at 703.683.5004. For non-media related inquiries, please call 800.882.6868

Press Release

FOR IMMEDIATE RELEASE
July 9, 2004

PTC Launches New Website to Facilitate Filing and Tracking FCC Indecency Complaints

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Coalition of Family Organizations Will Direct Members to www.CleanUp.tv to File Indecency Complaints

Los Angeles, CA - Today the **Parents Television Council**, the nation's most influential advocacy organization protecting children from sex, violence and profanity in entertainment, announced the formation of a new coalition of family organizations that will launch the website www.CleanUp.tv. The website is designed to serve as a clearing house for all complaints filed with the Federal Communications Commission (FCC) by the coalition's combined membership which numbers in the millions. Coalition members include the Parents Television Council, Concerned Women for America, Citizens for Community Values, Focus on the Family, and other pro-family organizations.

"For far too long the FCC's rules and requirements for filing indecency complaints has gotten in the way of citizens being able to speak out against the grossly indecent content streaming into their living rooms over the broadcast airwaves," said Brent Bozell, President of the PTC. "To make matters worse, the FCC has adopted a shamefully lax attitude towards processing those complaints. There have been numerous times when the FCC took thousands of individual complaints and lumped them

together as a single complaint. This website will give citizens all the tools and information they need to easily file complaints and to hold the FCC accountable for enforcing broadcast decency laws," added Bozell.

With the website's tracking technology the coalition will be able to accurately keep count of how many indecency complaints are filed with FCC. The website will break down the amount of complaints per incident as well as report the total filed complaints.

"The creation of www.cleanup.tv by the Parents Television Council will change the broadcast industry forever. Cleanup.tv gives the average person the opportunity to file complaints that could bring about fines or license revocation," said Phil Burrell, President of Citizen's for Community Values.

The website will also be an education tool by providing articles and research pertaining to indecency on broadcast television.

"The PTC is providing a great service for Americans who are fed up with indecent programming on radio and TV. The Cleanup.tv website makes it easy to file a complaint with the FCC and send a message to media moguls that trash TV and filthy shock jocks don't own the public airwaves and aren't welcome in our homes. We're not going to 'just turn the dial' - we're going to turn the tide against smut" said Jan LaRue, Chief Counsel for Concerned Women for America.

.....

The Parents Television Council was founded in 1995 to ensure that children are not constantly assaulted by sex, violence and profanity on television and in other media. This national grassroots organization has nearly one million members across the United States, and works with television producers, broadcasters, networks and sponsors in an effort to stem the flow of harmful and negative messages targeted to children. The PTC also works with elected and appointed government officials to enforce broadcast decency standards. Most importantly, the PTC produces critical research and publications documenting the dramatic increase in sex, violence and profanity in entertainment. This information is provided free of charge so parents can make informed viewing choices for their own families.

.....

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Cleanup.TV

Giving America the tools to
reduce broadcast indecency

A collaborative effort of concerned parents,
individuals, and bi-partisan local and national
organizations to clean up our nation's airwaves.



79,358 Complaints Filed Since January 1, 2004

FILE A COMPLAINT

- | | |
|-------------------------------------|---|
| >> HELP FOR PARENTS | >> ABOUT INDECENCY |
| >> INDECENCY NEWS | >> ABOUT THE FCC |
| >> OTHER RESOURCES | >> SIGN UP FOR NEWSLETTER |
| >> FAQS | >> APPEAL AN FCC RULING |
| >> TELL A FRIEND | >> ABOUT THE PTC |

NEWS

**Media Groups Ask
FCC to Reconsider
NBC Ruling**

**FCC Defends
Decency Limits,
Pushes Public
Interest**

**Complaints Pour
in to FCC Over
Super Bowl Flash**

**White House
Backs Anti-Smurf
Bill**

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A collaborative effort of concerned parents,
individuals, and bi-partisan local and national
organizations to clean up our nation's airwaves.



79,358 Complaints Filed Since January 1, 2004

FAQs



Tell a Friend
About this site



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- What is the purpose of Cleanup.TV?
- Why does this site exist?
- What happens to my report?
- Why should I file a complaint?
- What can I do about indecency?

What is the purpose of Cleanup.TV?

Like you, thousands of Americans are infuriated by the deluge of indecency that spews forth everyday by radio and television broadcasters. While the FCC sits idly, these concerned citizens entrust a coalition of socially proactive organizations to serve as catalysts to spark change within the FCC. This coalition is charged with solving the problems of the FCC's ignorance and fights on the behalf of the citizens and their families against broadcast indecency. Cleanup.tv offers a direct course of action by enabling you to **instantly file a Complaint with the FCC**. It provides **resources about the FCC**, broadcast indecency and the history of inaction between the two.

At Cleanup.tv, the often confusing process of filing a complaint is streamlined. Not only is your complaint filed with **the FCC's Enforcement Bureau**, but a copy of your complaint is delivered to **the FCC commissioners, The Senate Commerce Committee and The House Committee on Energy and Commerce**, as well.

Together, our complaints will help rouse the FCC's sleeping giant to finally do what Congress has mandated—to enforce **broadcast indecency laws!** Thank you for your interest in our efforts against broadcast indecency and

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NEWS

Majority of Americans Support Government Regulation of Entertainment Programming

Sources: Super Bowl flash to cost \$550,000

Senate Raises Radio, TV Indecency Fines

Parents Television Council Says FCC - Clear Channel Deal Unacceptable

Clear Channel settles for record \$1.75M

TV complaints to FCC soar as parents lead the way

TIMELINE

for helping us to challenge the FCC to take responsibility for America's broadcast airwaves. This is a fight that, together, we can win!!

Why does this site exist?

Cleanup.tv exists thanks to a diverse coalition of organizations who have come together against broadcast indecency. This coalition is frustrated by the FCC's non-enforcement of broadcast indecency laws. They have found that one major flaw with filing indecency complaints is that the FCC places the onus of providing proof of indecency solely on the complainant. This coalition wants to make the process of filing an **FCC indecency complaint** as easy as possible. They also want to provide **resources** and support to activists against broadcast indecency. This coalition's goal is to get the FCC to implement five steps in order to effectively enforce broadcasting indecency standards. These steps are to:

1. Specifically and clearly define broadcast indecency, rather than leaving the definition so nebulous that it becomes unenforceable. It is time for the Commission to show that it is serious about penalizing broadcast indecency.
2. Develop plans to monitor programming on broadcast television with funds stemming from its \$278,092,000 budget.
3. Direct the Enforcement Bureau to count multiple complaints about a single broadcast as multiple complaints.
4. Announce a specific time frame for responding to indecency complaints.
5. Announce guidelines that will reflect its willingness to enforce the law. If the FCC is serious about protecting the public interest regarding indecency, the FCC must begin to levy fines that will deter the broadcasters who allow indecent material to go out over the public airwaves. For the broadcaster who consistently and flagrantly airs indecent material, the penalties must be consistent and severe enough to exact a toll. Fines must be levied and fines must be collected. Repeat offenders must know that their license can and will be revoked if they continue to air indecent broadcasts.

What happens to my report?

After you submit your FCC indecency complaint on Cleanup.tv, it is delivered to **the FCC's Enforcement Bureau**. The duty of the FCC's Enforcement Bureau is to review all FCC indecency complaints. When the Enforcement Bureau analyzes a complaint, they must consider what was allegedly said during the broadcast, the intended meaning behind the reference and the context and situations under which the content appeared. The Commission's staff reviews each complaint to determine whether or not it violates the

12/19/03: Rep. Chip Pickering sends a letter to FCC Enforcement Bureau Chief David Solomon about the indecent language on the Billboard Music Awards, stating that he believes the incident is a direct result of the FCC's October Golden Globes ruling.

12/17/03: FCC Commissioner Kathleen Abernathy sends letter to Brent re: FCC's ruling on the Golden Globes "f-word"

12/15/03: Reps Doug Ose and Lamar Smith introduce legislation making eight words and phrases indecent regardless of how they're used.

12/11/03: Parents Television Council members file over 15,000 indecency complaints for the previous night's unbleeped foul language during Fox's Billboard Music Awards

12/10/03: During the Billboard Music Awards on Fox, Nicole Richie says: "Have you ever tried to get cow s---t out of a Prada Purse? It not so f----n' simple." The words are neither bleeped nor obscured the East or Central viewing zones

12/09/03: Senate resolution passed re: broadcast indecency

12/05/03: FCC Commissioner Kevin Martin sends Parents Television Council a letter re: FCC ruling on the Golden Globes "f-word"

12/05/03: FCC Commissioner Kevin Martin denounces the Golden Globes ruling during a speech at the Institute on Telecommunications Policy and Regulation

11/21/03: Rep. Chip Pickering sends a letter of disapproval to FCC Chairman Michael Powell re: FCC's Golden Globe f-word ruling and call on him to enforce the ban on profanity on the public airwaves.

11/21/03: 30 U.S. Representatives send a letter of disapproval to FCC Chairman Michael Powell for the

obscenity or indecency laws. If a violation has occurred, Enforcement Bureau staff will launch an investigation which can lead to fines levied by the FCC against the broadcast station. If the FCC denies the complaint, the complainant can still appeal. If the complaint was denied because of insufficient evidence, the complainant can re-file if additional information (i.e. a transcript, videotape or audiotape) can be provided. If the FCC denies a complaint because it feels the incident is not indecent, the complainant has the option of filing a petition for reconsideration of the staff action or an application for review (appeal) to the full Commission.

In addition, Cleanup.tv sends a complete list of complaints and the people who filed them to **The Senate Commerce Committee, The House Committee on Energy and Commerce** and the five **FCC commissioners**. The list illustrates the types of alleged broadcast indecency that aired, as well as the number of citizens who are outraged by the broadcast(s) and demand action. This is information that our nation's leaders would not otherwise receive.

(some information taken from www.fcc.gov)

Why should I file a complaint?

Filing a complaint is important because if you don't stand up against broadcast indecency, no one will! The FCC has placed the burden of proof on the viewer/listener, and the FCC will never fine a broadcast station for indecency without first receiving a complaint.

What can I do about indecency?

There are many things you can do to get involved in the fight against broadcast indecency!

Some people **File Complaints** with the FCC, on broadcasts they have seen, by using Cleanup.tv.

Some of our site's users check back from time to time to **join the FCC complaints of others**. When a number of complaints are filed by several people about a single instance of indecency, we will make information about the indecent incident available to others. You do not have to experience an indecent broadcast firsthand in order to become outraged and file a complaint with the FCC!

You may find it helpful to sign up for **e-alerts**, which will let you know of a major instance of broadcast indecency. In the past, we have mobilized concerned citizens who have **filed over 50,000 complaints** based on a single instance of broadcast indecency. Strength lies in numbers, and while a single complaint to the FCC can make a difference, thousands of complaints makes a HUGE difference!

FCC's f-word ruling and call on him to reverse the decision and sanction broadcasters who violate decency standards.

11/25/03: FCC Chairman Michael Copps sends letter to Parents Television Council stating his opinions re: FCC ruling on Golden Globes f-word.

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8/8/03: Sen. John McCain sends the Parents Television Council a letter as a response to the calling

Some citizens are so concerned about the broadcast indecency in their communities that they choose to start a **decency taskforce**. Decency taskforces mobilize local groups to fight for their rights at the local affiliate level. Decency taskforces are very effective because local television and radio stations may be more receptive to complaints than national networks. At the local level, the power is with those citizens who refuse to allow indecency to be broadcast without a stoic fight!

stiffer broadcast indecency fines.

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A collaborative effort of concerned parents,
individuals, and bi-partisan local and national
organizations to clean up our nation's airwaves.



79,358 Complaints Filed Since January 1, 2004

Complaint Form



Tell a Friend
About this site



Printer-Friendly
Version

By completing an FCC indecency complaint and clicking the "Sign and Submit" button, you will be registering an OFFICIAL COMPLAINT. You will need to provide the FCC with specific evidence needed to take immediate regulatory action against the program. Your COMPLAINT will be electronically forwarded to the FCC by the Parents Television Council. You will receive a copy of your complaint via email. We encourage you to print it out and mail it to the FCC to make sure that they don't "lose" your complaint that is sent via email.

HOME

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HELP FOR PARENTS
OTHER RESOURCES
FAQs
ABOUT THE PTC
NEWSLETTER

* These Fields are required in order for the FCC to accept your complaint.

Network	<input type="text" value="Select Network"/>
TV Network Affiliate	
Call Sign or Radio Call	<input type="text"/>
Sign: (click here to look it up) *	
Program Title *	<input type="text"/>
Broadcast Date *	<input type="text"/>
Broadcast Time *	<input type="text" value="Broadcast Time"/>
Timezone *	<input type="text" value="Eastern Time"/>
First Name *	<input type="text"/>
Last Name *	<input type="text"/>
Address *	<input type="text"/>
City *	<input type="text"/>
State *	<input type="text" value="Select Your State"/>
Postal Code *	<input type="text"/>
Your Email *	<input type="text"/>

NEWS

Majority of Americans
Support Government
Regulation of
Entertainment
Programming

Sources: Super Bowl flas
to cost \$550,000

Senate Raises Radio, TV
Indecency Fines

Parents Television Council
Says FCC - Clear Channel
Deal Unacceptable

Clear Channel settles for
record \$1.75M

TV complaints to FCC soa
as parents lead the way

TIMELINE

Description of
Indecency in the above
show: *

SIGN AND SUBMIT

Privacy Policy: The Parents Television Council will not exchange, rent, or sell your name to others. We will not add your name to our mailing list unless you sign up for a newsletter, request more information, or make a donation. You may request at any time that your name not be added or be deleted from the mailing list.

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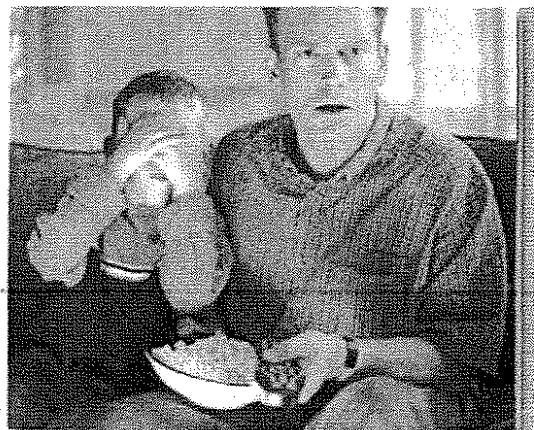
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79,358 Complaints Filed Since January 1, 2004

FCC Complaints Filed



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Version

Recent Indecency Complaints

Date Filed: April 7, 2004

Response from FCC: None

Program: *The Howard Stern Show - The Best of Howard Stern*

Air Date: April 5, 2004

Time: Between 6am and 10am PST

Network/Call Sign: KLSX-FM - Los Angeles

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: April 7, 2004

Response from FCC: None

Program: *C.S.I.*

Air Date: March 11, 2004

Time: 9PM Eastern/Pacific, 8PM Central/Mountain

Network/Call Sign: CBS

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: April 7, 2004

Response from FCC: None

Program: *C.S.I.*

Air Date: February 26, 2004

Time: 9PM Eastern/Pacific, 8PM Central/Mountain

Network/Call Sign: CBS

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: April 4, 2004

Response from FCC: None

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INDECENCY NEWS](#)

[HELP FOR PARENTS](#)

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[NEWSLETTER](#)

NEWS

**Majority of Americans
Support Government
Regulation of
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**Sources: Super Bowl 1
to cost \$550,000**

**Senate Raises Radio,
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**Parents Television Co
Says FCC - Clear Chan
Deal Unacceptable**

**Clear Channel settles
record \$1.75M**

**TV complaints to FCC
as parents lead the w**

TIMELINE

Program: *The Howard Stern Show*
Air Date: April 1, 2004
Time: Between 6am and 10am PST
Network/Call Sign: KLSX-FM - Los Angeles

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: April 4, 2004
Response from FCC: None
Program: *The Howard Stern Show*
Air Date: March 31, 2004
Time: Between 6am and 10am PST
Network/Call Sign: KLSX-FM - Los Angeles

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: April 4, 2004
Response from FCC: None
Program: *The Howard Stern Show*
Air Date: March 26, 2004
Time: Between 6am and 10am PST
Network/Call Sign: KLSX-FM - Los Angeles

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: April 4, 2004
Response from FCC: None
Program: *The Howard Stern Show*
Air Date: March 19, 2004
Time: Between 6am and 10am PST
Network/Call Sign: KLSX-FM - Los Angeles

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: April 4, 2004
Response from FCC: None
Program: *The Howard Stern Show*
Air Date: March 18, 2004
Time: Between 6am and 10am PST
Network/Call Sign: KLSX-FM - Los Angeles

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: February 17, 2004
Response from FCC: None
Program: *The Practice*
Air Date: February 15, 2004
Time: 10PM Eastern/Pacific, 9PM Central/Mountain
Network/Call Sign: ABC
San Antonio, TX Affiliate: WSAT-TV

12/19/03: Rep. Chip Picker sends a letter to FCC Enforcement Bureau Chief David Solomon re: the indecent language on the Billboard Music Awards, stating he believes the incident is a result of the FCC's October 6 Globes ruling.

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Partial Transcript

- Alan returns to his hometown to defend his childhood friend, Paul, who has been accused of murdering his mistress, Brenda. Brenda's neighbor, Mrs. Piper, blackmails Paul's wealthy mother in exchange for not implicating Paul, whom she saw leaving the scene of the murder. Alan asks a priest friend to tell him anything he knows that could help Paul. The priest won't break the confessional seal. **Alan:** "...Kevin, it's me, Alan. We played on the same soccer team. We've showered together. You had a very small penis then. Has it..."
- Later: **Victoria:** "Alan, I believe you've met Catherine Piper." **Alan:** "What is she doing here?" **Mrs. Piper:** "Why, I'm here to suck on one of Victoria's shriveled nipples, of course. Is that why you're here, Alan? Or is it just to drop some dog crap off at the door?"

Date Filed: February 17, 2004
Response from FCC: None
Program: *The Surreal Life II*
Air Date: February 8, 2004
Time: 9PM Eastern/Pacific, 8PM Central/Mountain
Network/Call Sign: WB
DC Affiliate: KBDC-TV

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: February 17, 2004
Response from FCC: None
Program: *The Surreal Life II*
Air Date: January 25, 2004
Time: 9PM Eastern/Pacific, 8PM Central/Mountain
Network/Call Sign: WB
DC Affiliate: KBDC-TV

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: February 17, 2004
Response from FCC: None
Program: *The Surreal Life II*
Air Date: January 18, 2004
Time: 9PM Eastern/Pacific, 8PM Central/Mountain
Network/Call Sign: WB
DC Affiliate: KBDC-TV

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Air Date: January 11, 2004
Time: 9PM Eastern/Pacific, 8PM Central/Mountain
Network/Call Sign: WB
DC Affiliate: KBDC-TV

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: November 24, 2003
Response from FCC: None
Program: *Coupling*
Air Date: September 25, 2003
Time: 9PM EST
Network/Call Sign: NBC
DC Affiliate: WRC

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: October 29, 2003
Response from FCC: None
Program: *Cold Case*
Air Date: September 28, 2003
Time: 8PM EST
Network/Call Sign: CBS
DC Affiliate: WUSA

—Partial Transcript

- Eric tells a flashback of what really happened the night Jill was killed. Todd walks up to Jill and Eric, catching them kissing.

Todd: "So you finally got a taste of her, didn't you. Now you have something real to jack off to."

Jill: "Todd!"

Todd: "Have you seen him in the window watching us have sex?"

Eric: "That's crazy."

Todd: "Up in the tree with his hand down his pants."

Jill: "Stop, please."

Todd: "Well you're the one who just screwed him."

Jill: "I didn't screw him, give me some credit!"

Todd: "I saw you all pressed up to him."

Jill: "Only because you were off with Melanie!"

Todd: "Just stop talking."

Jill: "Asshole."

Todd: "Bitch."

Eric: "Don't."

Todd: "Shut up! You're so pathetic."

Jill: "You're such a prick."

Todd: "You shut your mouth."

Jill: "Screw you."

Todd: "Hey, slut, I said shut your mouth."

Todd then slams her to the ground, and beats her to death with a tennis racket. The end of the beating shows Eric watching Todd and you only hear

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Date Filed: July 3, 2003
Response from FCC: None
Program: *NYPD Blue*
Air Date: May 13, 2003
Time: 9:00PM Central/Standard Time
Network/Call Sign: ABC
Kansas City Affiliate: KMBC

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: July 3, 2003
Response from FCC: None
Program: *NYPD Blue*
Air Date: May 6, 2003
Time: 9:00PM Central/Standard Time
Network/Call Sign: ABC
Kansas City Affiliate: KMBC

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Kansas City Affiliate: KMBC

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1990: DC Circuit court requires FCC to lift the 24-hour ban on indecency.

12/1998: President Reagan signs into law a requirement that the FCC implement 18 U.S. Code § 1465 banning indecent broadcasts completely - 24 hours a day.

7/3/1978: U.S. Supreme Court decides *FCC v. Pacifica Foundation* holding that the U.S. Government can constitutionally regulate indecent broadcasts.

6/21/73: U.S. Supreme Court defines obscenity - which is not granted First Amendment protection - in *Miller v. California*.

10/30/73: A New York radio station, owned by the Pacific Foundation, broadcasts George Carlin's "Filthy Words" monologue. A man, driving with his young

CLICK HERE TO VIEW MATERIAL COMPLAINT IS BASED ON

Date Filed: July 1, 2003
Response from FCC: None
Program: *NYPD Blue*
Air Date: February 18, 2003
Time: 9:00PM Central/Standard Time
Network/Call Sign: ABC
Kansas City Affiliate: KMBC

heard the broadcast and wrote letter to the FCC stating that although he could perhaps understand the "record's been for private use, [he] certainly not] understand the broadcast [the] same over the air that, supposedly, you [the FCC] could

6/19/34: Federal Communications Act passed, establishing the

Date Filed: July 1, 2003
Response from FCC: None
Program: *NYPD Blue*
Air Date: February 11, 2003
Time: 9:00PM Central/Standard Time
Network/Call Sign: ABC
Kansas City Affiliate: KMBC

Date Filed: July 3, 2003
Response from FCC: None
Program: *NYPD Blue*
Air Date: February 4, 2003
Time: 9:00PM Central/Standard Time
Network/Call Sign: ABC
Kansas City Affiliate: KMBC

Date Filed: July 3, 2003
Response from FCC: None
Program: *NYPD Blue*
Air Date: January 14, 2003
Time: 9:00PM Central/Standard Time
Network/Call Sign: ABC
Kansas City Affiliate: KMBC

Date Filed: June 20, 2003
Response from FCC: None
Program: *Keen Eddie*
Air Date: June 10, 2003
Time: 9PM Eastern/Pacific, 8PM Central/Mountain
Network/Call Sign: FOX
DC Affiliate: WTTG

Partial Transcript

- The plot involved a case about black market traffic in horse semen. A group of thugs hired a prostitute (whose ad in the newspaper read, "Forty Year

Old Filthy Slut. Will Do Anything") to perform a sex act with a horse. When the prostitute showed up at the stable, the thugs asked her to perform a sex act with the horse because they needed its semen.

Prostitute: No, that's not natural.

Thug: Extraction for insemination. If you look at the picture on page 45 you'll see how natural it is...

Prostitute: Forget it!

Another Thug: You're a 40-year old filthy slut, you'll do anything...

Prostitute: With a human...

The prostitute finally agrees to go through with it. She goes to the stable and attempts to arouse the horse, but the horse drops dead. She explains, "I never laid a finger on it. I lifted up my blouse, that's all... he needs to get aroused. I happen to know a little something on this subject."

Date Filed: February 26, 2003

Response from FCC: None

Program: *NYPD Blue*

Air Date: February 25, 2003

Time: 9:00PM Central/Standard Time

Network/Call Sign: ABC

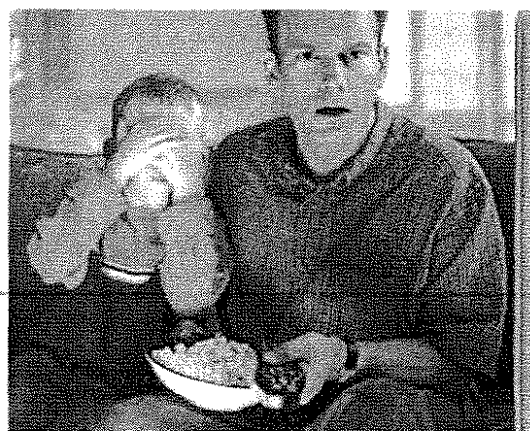
Kansas City Affiliate: KMBC

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Cleanup.TV

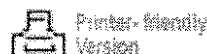
Giving America the tools to
reduce broadcast indecency

A collaborative effort of concerned parents,
individuals, and bi-partisan local and national
organizations to clean up our nation's airwaves.



79,358 Complaints Filed Since January 1, 2004

About the FCC



The Federal Communications Commission (FCC) is an independent United States government agency, directly responsible to Congress. The FCC was established by the **Communications Act of 1934** and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions.

Organization

The FCC is directed by five Commissioners appointed by the President and confirmed by the Senate for 5-year terms, except when filling an unexpired term. The President designates one of the Commissioners to serve as Chairperson. Only three Commissioners may be members of the same political party. None of them can have a financial interest in any Commission-related business.

Michael K. Powell Chairman
Kathleen Q. Abernathy Commissioner
Michael J. Copps Commissioner
Kevin J. Martin Commissioner
Jonathan S. Adelstein Commissioner

Gloria Tristani FORMER Commissioner

Bureaus and Offices of the FCC

The Chairman is the chief executive officer of the Commission and delegates management and administrative responsibility to the Managing Director. The Commissioners supervise all FCC activities, delegating responsibilities to staff units and Bureaus. There are six operating Bureaus and ten Staff Offices. The Bureaus' responsibilities include: processing applications for licenses and other filings; analyzing complaints; conducting investigations; developing and implementing regulatory programs; and taking part in hearings. Our Offices provide support services. Even though the Bureaus and Offices have their individual functions, they regularly join forces and share expertise in addressing

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**FILE A COMPLAINT
ABOUT THE FCC
ABOUT INDECENCY
INDECENCY NEWS
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OTHER RESOURCES
FAQs
ABOUT THE PTC
NEWSLETTER**

NEWS

**Majority of Americans
Support Government
Regulation of
Entertainment
Programming**

**Sources: Super Bowl flas
to cost \$550,000**

**Senate Raises Radio, TV
Indecency Fines**

**Parents Television Council
Says FCC - Clear Channel
Deal Unacceptable**

**Clear Channel settles for
record \$1.75M**

**TV complaints to FCC soa
as parents lead the way**

TIMELINE

Commission issues.

Consumer & Governmental Affairs Bureau - educates and informs consumers about telecommunications goods and services and engages their input to help guide the work of the Commission. CGB coordinates telecommunications policy efforts with industry and with other governmental agencies — federal, tribal, state and local — in serving the public interest.

Enforcement Bureau - enforces the Communications Act, as well as the Commission's rules, orders and authorizations. **Makes rulings on indecency claims.**

International Bureau - represents the Commission in satellite and international matters.

Media Bureau - regulates AM, FM radio and television broadcast stations, as well as Multipoint Distribution (i.e., cable and satellite) and Instructional Television Fixed Services.

Wireless Telecommunications Bureau - oversees cellular and PCS phones, pagers and two-way radios. This Bureau also regulates the use of radio spectrum to fulfill the communications needs of businesses, local and state governments, public safety service providers, aircraft and ship operators, and individuals.

Wireline Competition Bureau - responsible for rules and policies concerning telephone companies that provide interstate, and under certain circumstances intrastate, telecommunications services to the public through the use of wire-based transmission facilities (i.e., corded/cordless telephones).

Office of Administrative Law Judges - presides over hearings, and issues Initial Decisions.

Office of Communications Business Opportunities - provides advice to the Commission on issues and policies concerning opportunities for ownership and contracting by small, minority and women-owned communications businesses.

Office of Engineering And Technology - allocates spectrum for non-Government use and provides expert advice on technical issues before the Commission.

Office of The General Counsel - serves as chief legal advisor to the Commission's various Bureaus and Offices.

Office of Inspector General - conducts and supervises audits and investigations relating to the operations of the Commission.

Office of Legislative Affairs - is the Commission's main point of contact with Congress.

12/19/03: Rep. Chip Pickering sends a letter to FCC Enforcement Bureau Chief David Solomon about the indecent language on the Billboard Music Awards, stating that he believes the incident is a direct result of the FCC's October Golden Globes ruling.

12/17/03: FCC Commissioner Kathleen Abernathy sends letter to Rep. Brent Ridge re: FCC's ruling on the Golden Globes "f-word"

12/15/03: Reps Doug Ose and Lamar Smith introduce legislation making eight words and phrases indecent regardless of how they're used.

12/11/03: Parents Television Council members file over 15,000 indecency complaints for the previous night's unbleeped foul language during Fox's Billboard Music Awards

12/10/03: During the Billboard Music Awards on Fox, Nicole Richie says: "Have you ever tried to get cow s---t out of a Prada Purse? It's not so f---in' simple." The words are neither bleeped nor obscured in the East or Central viewing zones

12/09/03: Senate passes resolution re: broadcast indecency

12/05/03: FCC Commissioner Kevin Martin sends Parents Television Council a letter re: FCC ruling on the Golden Globes "f-word"

12/05/03: FCC Commissioner Kevin Martin denounces the Golden Globes ruling during a speech at the Institute on Telecommunications Policy and Regulation

11/21/03: Rep. Chip Pickering sends a letter of disapproval to FCC Chairman Michael Powell re: FCC Golden Globe f-word ruling and calls on him to enforce the ban on profanity on the public airwaves.

11/21/03: 30 U.S. Representatives send a letter of disapproval to FCC Chairman Michael Powell for the

Office of The Managing Director - functions as a chief operating official and serves under the direction and supervision of the FCC's Chairman.

Office of Media Relations - informs the news media of FCC decisions and serves as the Commission's main point of contact with the media.

Office of Strategic Planning & Policy Analysis - works with the Chairman, Commissioners, Bureaus and Offices to develop strategic plans identifying policy objectives for the agency.

Office of Work Place Diversity - advises the Commission on all issues related to workforce diversity, affirmative recruitment and equal employment opportunity.

FCC's f-word ruling and call on hi to reverse the decision and sanct broadcasters who violate decency standards.

11/25/03: FCC Chairman Micha Copps sends letter to Parents Television Council stating his opinions re: FCC ruling on Golder Globes f-word.

11/17/03: NBC replies to the Parents Television Council's appe of the Golden Globes decision

10/27/03: FCC Commissioner Michael Copps sends a letter to ti Parents Television Council in diss of the Golden Globes f-word rulin

10/21/03: The Parents Televisi Council calls for FCC Commission action re: f-word ruling

10/03/03: FCC enforcement bureau, headed by David Solomc finds that Bono's statement, "Thi really, really f----n' brilliant," whi aired live and unbleeped on NBC during the Golden Globes was no indecent because it was used as "adjective or expletive."

10/2/02: The Parents Televisior Council calls for better enforceme of indecency after paltry fines we levied for indecent radio broadca on 13 of Infinity's affiliates during the "Opie and Anthony Show" an Clear Channel's "Elliot in the Morning" on WWDC-Washington

10/2/03: FCC Commissioner Michael Copps releases out a statement of dissention of the FC small fines against radio indecen by "Opie and Anthony" and "Ellio the Morning."

10/2/03: FCC fines 13 Infinity affiliates \$27,500 each for broadcasting an episode of "Opie and Anthony" during which two people had sex inside St. Patrick' Cathedral.

10/2/03: FCC fines WWDC-FM "Elliot in the Morning" a total of \$55,000 for two instances of broadcast indecency where the h of the morning talk program engaged in, and broadcasted, se: discussions with two underage female callers.

8/8/03: Sen. John McCain send the Parents Television Council a letter as a response to the calling

stiffer broadcast indecency fines.

7/23/03: Parents Television Council President testifies before Senate Commerce Committee that the FCC has refused to do its job enforce broadcast decency laws.

7/14/03: The Parents Television Council Kansas City chapter files FCC indecency complaint against KQRC-FM for its indecent radio stunt.

7/9/03: KQRC-FM Kansas City airs a live segment in which a male employee of the morning show stands alongside (of) a rush hour jammed freeway to hand out free lottery tickets. The man is naked except for where the tickets are taped to his body.

7/8/03: FCC Commissioner Kev Martin sends a letter to the Parents Television Council concerning broadcast indecency in response to our 4/30 mandate.

7/2/03: FCC Commissioner Michael Copps gives FCC a grade of "F" for failure to act strongly against indecency.

6/25/03: The Parents Television Council sends a letter to FCC Chairman Michael Powell regarding an episode of Fox's *Keen Eddie*.

6/11/03: The Parents Television Council Files an indecency complaint with the FCC over an episode of *Keen Eddie* that featured bestiality. 20,000 Parents Television Council members also file complaints with the FCC.

6/10/03: Fox airs an episode of freshman drama *Keen Eddie* in which a female prostitute is hired to perform a sex act on a horse to harvest its semen.

4/30/03: A Pro-family coalition meets with several FCC commissioners (Copps, Abernath and Martin) and demands action on the issue of television decency standards.

2/27/03: Parents Television Council president testifies at an FCC town hall meeting in Richmond, VA and calls on the FCC to enforce television decency standards.

2/27/03: The "f-word" is uttered and aired unbleeped during an

episode of *I'm a Celebrity...Get Me Out of Here!*

1/25/2003: Parents Television Council members file 18,000 complaints with the FCC about "t "F-word" aired during NBC's Gold Globes broadcast.

1/22/03: FCC Commissioner Michael Copps calls broadcast industry "a race to the bottom" in speech at NAPTE 2003 Family Programming Forum re: Family Hour.

1/1/2003: The Parents Television Council launches FCC campaign.

4/6/2001: FCC publishes Indus Guidelines on Indecency.

3/30/2001: FCC imposes its first and only fine against a television station for an indecent broadcast \$21,000 fine for television indecency to Telemundo of Puerto Rico.

11/8/1999: FCC's Enforcement Bureau is established.

1997: Supreme Court upholds Pacifica ruling in *Reno v. ACLU*.

01.03.96: Telecommunications Act of 1996 is passed; allows anyone enter the communications business and lets any communications business compete in any market against any other.

1990: DC Circuit court requires the FCC to lift the 24-hour ban on indecency.

12/1998: President Regan signs into law a requirement that the FCC implement 18 U.S. Code § 1463, banning indecent broadcasts completely - 24 hours a day.

7/3/1978: U.S. Supreme Court decides *FCC v. Pacifica Foundation* holding that the U.S. Government can constitutionally regulate indecent broadcasts.

6/21/73: U.S. Supreme Court defines obscenity - which is not granted First Amendment protection - in *Miller v. California*.

10/30/73: A New York radio station, owned by the Pacifica Foundation, broadcasts George Carlin's "Filthy Words" monologue. A man, driving with his young son

heard the broadcast and wrote a letter to the FCC stating that although he could perhaps understand the "record's being so for private use, [he] certainly [could not] understand the broadcast of [the] same over the air that, supposedly, you [the FCC] contr

6/19/34: Federal Communications Act passed, establishing the FCC.

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EXHIBIT 4

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Margaret McVeigh
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[Amazon.com's grasp](#)

TO: Massachusetts
Legislature
[Oust in-justices for legislating from bench!](#)

TO: The American public
[Support Alan Keyes' U.S. Senate run for our nations' sake!](#)

TO: Speaker of House
Dennis Hastert and House
Majority Leader Tom DeLay
[Censure 13 Representatives for sending letter to U.N.](#)

TO: U.S. Attorney General
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TO: Nickelodeon Advertiser
[Help us educate Nickelodeon advertisers](#)

TO: ACLU president
[Defend Christians and Jews against Islamic indoctrination](#)

TO: U.S. Legislator

Petition opened February 11, 2004, 7,982 Signatures

[Read the background](#) | [Read the body of the petition](#)

The Super Bowl halftime show broadcast into our living rooms by CBS was offensive from start to finish. Justin Timberlake's exposure of Janet Jackson's breast merely concluded a purposefully lewd show filled with numerous indecent acts by P. Diddy, Nelly and Kid Rock that were just as damaging to children among the 89 million unsuspecting viewers.

Don't let CBS wiggle off the hook! Make the network pay for its failure to protect America's families. Sign this petition urging the FCC to punish CBS to the fullest extent, slapping each CBS station with \$27,500 fines for each indecent act. **Then consider joining a lawsuit** against all the companies that contributed to damaging our children with the indecent display.

Want more information?

▶ Please click "read the background" and "read the body of the petition."

Ready for action?

▶ Please click the blue-outlined "Sign" button and select the option right for you.

PAINFUL PENALTY NEEDED!

**Make CBS pay for halftime sleaze:
Sign FCC petition, then join lawsuit!**

**NOTE -- Send your petition by fax as well as email!
Look for your opportunity after signing this petition.**

While Justin Timberlake's exposure of Janet Jackson's breast commands the national spotlight, this act merely concluded a purposefully lewd Super Bowl halftime show filled with numerous indecent acts by P. Diddy, Nelly and Kid Rock that were just as damaging to children among the 89 million unsuspecting viewers. *[For details, [CLICK HERE!](#)]*

"Everybody is focusing on the finale, but a lot of what we heard in terms of the complaints and the breadth of the investigation is a little broader than just that incident," remarked FCC Chairman Michael Powell. "I personally was offended by the entire production, and I think that most of the complaints we have received are much broader than just the final incident."

CBS must pay, and here are two ways you can help:

- **The FCC must punish the network to the fullest extent possible.**
- **American citizens must join together in a lawsuit that seeks compensation for damages done by the horrendous halftime displays.**

Potential FCC fines of up to \$27,500 for

Stop Human Embryo Stem Cell Research

TO: A&F President Michael Jeffries
 Boycott Abercrombie & Fitch

TO: Big Brothers Big Sisters
Change mandate that allows homosexual mentors

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PREDATOR STALKS CAMPGROUNDS! ...

[Full Story]

TURN AMERICA BACK TO GOD! ...

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OUT OF BALANCE! ...

[Full Story]

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Women Should Vote for Federally Funded Child Care, Group Says ...
 [Full Story]

Poll Indicates Close, 'Frozen' Race ...
 [Full Story]

each offense, if applied to each CBS station, would stagger the network. For the sake of America's children and youth, **let's make sure that happens! Sign this petition** to demand the FCC penalize CBS the maximum amount possible!



If the FCC determines, say, 10 indecent acts were committed during the halftime show, that would be \$275,000 per CBS affiliate. The 187 stations would demand the network reimburse them a total of \$50,325,000 -- a price that would prohibit any future debauchery on prime-time TV.

Sure, CBS blames MTV, which in turn points to the performers. Everyone alibied and apologized for the "mistake," hoping it all will blow over while fattening bank accounts as intended. Still, the fact remains the CBS broadcast obviously violated indecency laws. The network ultimately is responsible for its inability to protect the innocence of millions of kids and teens during TV's biggest night.

Knowing MTV's track record for confusing indecent displays with entertainment -- remember last year's infamous lip-lock between Madonna and Britney Spears? -- competent network executives would have used time-delay technology, unless they desired a profitable clamor. The Drudge Report says top CBS executives approved plans to bare Jackson's breast, that "the decision to go forward went to the very top of the network," according to a well-placed source. And MTV Networks Group President Judy McGrath reportedly promised just such an incident in a speech she made a year ago. Therefore **sign this petition** calling for the FCC to slap CBS with the strongest possible penalties and financial fines.

Affiliates know the corporate office has it coming and sent a letter to CBS President and CEO Leslie Moonves saying "the network let us down and embarrassed us in front of our public. It was not just one incident in the halftime show; from beginning to end the show was in poor taste and reflected poor judgment."

An excruciatingly painful price must be paid by CBS for betraying the viewing public. Such degradation must never again appear during network programming!

Remember: CBS is the network that first championed "*The Reagans*," a fraudulent miniseries that smeared the character of former President Ronald Reagan. Dan Rather and the news department are notorious for biased "reporting," such as the vicious hatchet job against homeschooling. And, in its latest offense, CBS allowed "60 Minutes" commentator Andy Rooney to brazenly mock God and attack believers as "wackos" who are "crazy as bedbugs" for hearing His voice.

Leaving it up to the FCC is not enough! We, the people, must act on our own. After signing this petition, look for an email inviting you to join other Americans in a lawsuit against not just CBS and MTV, but also parent company Viacom, AOL and the NFL for damage done by indecent acts committed during the halftime show.

First, make your voice heard by the FCC. Your signed petition will go to all commissioners. Please consider faxing your petition as well for added impact, and be sure to tell everyone you know about this petition.

Australian 'Taliban' Pleads
Not Guilty to War Crimes
Charges ...
[\[Full Story\]](#)

No Legal Reason Why UN
Health Body Can't Invite
Taiwan as Observer ...
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The planned offenses during the Super Bowl halftime show was a direct frontal attack on the goodness of America. We have a moment to do something. If this moment passes and we the people do not seize it, then American TV will drop straight down into the sewer, making a bared breast tame in comparison. Act now!

Rev. Louis P. Sheldon
Traditional Values Coalition

Alan Keyes
Declaration Alliance

PLEASE SIGN THIS PETITION!
Then email everyone you know!

After signing, click here for more information
on the Super Bowl halftime show lawsuit:
<http://www.sueCBS.com>

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Dennis Hastert and House
Majority Leader Tom DeLay
[Censure 13 Representatives for sending letter to U.N.](#)

TO: U.S. Attorney General
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[Help us educate Nickelodeon advertisers](#)

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[Defend Christians and Jews against Islamic indoctrination](#)

TO: U.S. Legislator

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While the information is required to authentically back up your signature, it is not sent to those targeted by the petitions. We at ConservativePetitions.com guard the privacy of those willing to boldly stand up and be counted. That's why we offer the safe and convenient option of registering your information under password protection.

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[Boycott Abercrombie & Fitch](#)

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[Change mandate that allows
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EXHIBIT 5

*Family Issues in
Policy and
Culture*

Family News

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August 16, 2004

FCC Settlement Raises Questions

by Stuart Shepard, correspondent

The Federal Communications Commission hands down a fine to a raunchy radio host, but some charge it wasn't enough.

The Federal Communications Commission's recent spate of actions against indecent programs on radio and TV now includes a \$300,000 settlement with the nationally syndicated Erich "Mancow" Muller, who has netted dozens of formal complaints for his vulgar, sexually graphic antics.

Emmis Communications, the Indianapolis-based company which syndicates Muller's program, agreed to, in its words, "make a voluntary contribution" to the U.S. Treasury, and admitted it had aired indecent material.

Still, many believe the fine isn't big enough, including Dave Smith, who filed several indecency complaints against Muller.

"It is a small fine when you consider that Emmis was facing 35 more possible fines at \$27,500 each," he said, "It's a slap on the wrist — especially when you consider that they're a multimillion dollar corporation."

Smith is concerned that, as a part of the settlement, the FCC agreed to clear the table of every pending complaint and investigation into the company's radio stations.

"When they go to renew their license in November, the FCC is going to have amnesia when it comes to the \$300,000 fine and the admission of guilt," Smith said.

Buddy Smith, a spokesman for the American Family Association, said the way to keep the attention of stations is through their licenses — and the threat of non-renewal.

"That's the only way," he said, "that this kind of activity is going to be deterred in the future."

FCC Commissioner Michael Copps took his fellow commissioners to task for the settlement.

"If we are not actually changing the rules of the game," he wrote, "we are, at a minimum, sending a wrong and discouraging signal to those citizens upon whom we rely in implementing the law."

TAKE ACTION/FOR MORE INFORMATION

Let Michael Copps and the four other FCC commissioners know how you feel about the "Mancow" Muller fine and the agency's fight against broadcast obscenity in general by visiting the CitizenLink Action Center. You'll find an easy-to-use e-mail form that will allow you to send one message to all five commissioners.

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